

SCC Email Alert #2
July 14, 2010

Subject: SEC Publishes Concept Release on Proxy Issues

The Securities and Exchange Commission (SEC) just posted its 150-page Concept Release on the U.S. proxy system. Click on the following link to review this document: <http://www.sec.gov/rules/concept/2010/34-62495.pdf>

The Commission has established a 90-day comment period for this Concept Release.

Pasted below is a press release and fact sheet just issued by the SEC.

Thank you for your interest in the Shareholder Communications Coalition.

Niels Holch
Executive Director

FOR IMMEDIATE RELEASE
2010-122

Washington, D.C., July 14, 2010 — The Securities and Exchange Commission today voted unanimously to issue a concept release seeking public comment on the U.S. proxy system and asking whether rule revisions should be considered to promote greater efficiency and transparency.

Additional Materials

[Concept Release](#)

The U.S. proxy system governs the way in which investors vote their shares in a public company regardless of whether they attend shareholder meetings.

“The proxy is often the principal means for shareholders and public companies to communicate with one another, and for shareholders to weigh in on issues of importance to the corporation,” said SEC Chairman Mary L. Schapiro. “To result in effective governance, the transmission of this communication between investors and public companies must be timely, accurate, unbiased, and fair.”

It has been nearly 30 years since the Commission last conducted a comprehensive review of the proxy voting infrastructure. With significant changes since then in shareholder demographics, technology, and other areas, the Commission’s review of

the U.S. proxy system will examine emerging issues that either did not exist or were not considered significant three decades ago.

The SEC's concept release focuses on the accuracy and transparency of the voting process, the manner in which shareholders and corporations communicate, and the relationship between voting power and economic interest.

There will be a 90-day public comment period for the concept release after it is published in the Federal Register.

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FACT SHEET

Overview

Last year, Chairman Schapiro directed the SEC staff to undertake a comprehensive review of the U.S. proxy system. More than 600 billion shares are voted at more than 13,000 shareholder meetings every year.

In the three decades since the Commission last conducted a comprehensive review, there have been dramatic changes affecting the operation of that system. Those include technological innovations, changes in the nature of stock ownership, consolidation of proxy distribution service providers, growth in other types of proxy service providers, and new financial products.

As part of its review, the Commission issued the concept release seeking public comment on concerns raised by investors and industry participants relating to the accuracy, reliability, transparency, accountability, and integrity of the U.S. proxy system.

What is the U.S. proxy system?

The U.S. proxy system governs how investors vote their shares on matters presented to shareholders at shareholder meetings. Most investors vote their shares by proxy — that is, they give authority to someone else to vote their shares according to their instructions. This means that investors can vote their shares without having to attend shareholder meetings.

Many investors are "record owners" — that is, their names are listed in the company's shareholder records — and they can vote their shares directly by granting a proxy. The vast majority of investors in U.S. companies, however, hold their shares in "street name" — that is, in customer accounts with a securities intermediary, which is usually a broker or bank. To vote their shares, these investors, who are also known as "beneficial owners," typically give voting instructions to their securities intermediary or to a third party (known as a "proxy service provider") retained by the securities intermediary to receive voting instructions on its behalf.

In turn, the securities intermediary will reflect the beneficial owners' voting instructions when executing its proxy for shares held in its customer accounts.

Ultimately, proxies from record owners and proxies from securities intermediaries (reflecting voting instructions from beneficial owners) are delivered to a vote tabulator to determine the outcome of the vote.

What issues does the concept release address?

The concept release, which requests comment on matters relating to the U.S. proxy system, is organized under three general areas:

Accuracy, transparency, and efficiency of the voting process.

Communications and shareholder participation.

Relationship between voting power and economic interest.

The specific matters covered in those areas are:

Over-voting and under-voting of shares: At times, a broker-dealer — or other securities intermediary — may cast more votes, or fewer votes, than the number of shares that the intermediary actually holds. This imbalance results from the way securities transactions are cleared and settled in the U.S. markets.

Some securities intermediaries, primarily broker-dealers, have developed methods to reconcile their records and allocate votes to their customers in order to avoid “over-voting.” One of those methods, however, may result in “under-voting,” which occurs when investors who are allocated the ability to vote fail to do so, and other investors who do vote may be allocated a number of votes fewer than the number of shares they hold.

The concept release seeks comment on whether over-voting or under-voting is a problem, and if so, whether the method used by the broker-dealer to allocate votes should be disclosed, and whether the Commission should require the use of a particular method.

Vote confirmation: The concept release explores the possibility of requiring vote tabulators, securities intermediaries, and proxy service providers to provide each other with access to vote data so investors and issuers can confirm that votes have been received and tallied according to investors’ voting instructions.

Proxy voting by institutional securities lenders: Institutional shareholders often lend their securities, and shares on loan generally cannot be voted by the lender unless the shares are recalled. Without sufficient advance notice of the matters to be voted on, lenders may not be able to recall shares in time to vote on matters of interest. The concept release examines whether shareholders would be helped by requiring the agenda items at shareholder meetings to be identified earlier, so that lenders can make a decision to re-call their shares and vote on issues important to them. In addition, the concept release explores whether mutual funds and closed-end funds should be required to disclose the number of shares that a fund votes at a particular meeting, in addition to how that fund votes.

Proxy distribution fees: Stock exchange rules, last revised in 2002, establish the maximum fees that a member broker-dealer may charge an issuer as “reasonable reimbursement” for forwarding proxy materials. In response to concerns about whether this fee structure continues to constitute reasonable reimbursement, the concept release discusses several potential actions, including having the stock exchanges revise the fee schedule or eliminate it in favor of allowing market forces to determine appropriate fees.

Issuers’ ability to communicate with beneficial owners of securities: Some issuers have expressed concerns that they are limited in their ability to communicate directly with their shareholders. These issuers cite the “street name” system of ownership, as well as rules allowing beneficial owners to object to having their identities disclosed to issuers, as reasons for this concern. Among other things, the concept release seeks comments on whether to preserve, eliminate, limit, or discourage the use of objecting beneficial owner status.

Potential means to facilitate retail investor voting participation: The concept release presents several ideas that could potentially improve retail investor voting participation, including:

- Improving investor education

- Enhancing brokers’ Internet platforms

- Permitting advance voting instructions for retail investors

- Enhancing investor-to-investor communications

- Improving the use of the Internet for distribution of proxy materials

Data-tagging proxy-related materials: At the suggestion of the SEC’s Investor Advisory Committee, the concept release seeks comment on whether data-tagging proxy-related data, such as information relating to executive compensation and director qualifications, might enhance a shareholder’s ability to analyze issuer disclosures to make informed voting decisions.

Role of proxy advisory firms: Some companies and investors have raised concerns that proxy advisory firms may be subject to conflicts of interest or may fail to conduct adequate research and base recommendations on erroneous or incomplete facts. As a result, the concept release seeks comment on improving disclosure of potential conflicts of interest, enhancing regulatory oversight over the formation of voting recommendations, and requiring eventual public disclosure by proxy advisory firms of their voting recommendations in Commission filings.

Dual record dates: Companies set a date — known as the “record date” — on which persons who are shareholders on that date are entitled to receive notice of a meeting and to vote at the meeting. If a shareholder sells after the record date, that person (who no longer holds the shares) still has the right to vote. This can mean that holders without an economic stake in the matter can influence the outcome of a vote.

Recent changes to state law, however, now allow for “dual record dates” — one for determining who is entitled to receive notice of the meeting and a later one for determining who can vote at the meeting. The concept release requests comment on whether the Commission’s rules should be revised to accommodate dual record dates.

“Empty voting”: The concept release requests comment on whether “empty voting” and related activities are being used to inappropriately influence corporate voting results. “Empty voting” occurs when a shareholder’s voting rights substantially exceed its economic interest in the company — that is, its voting rights are “decoupled” from its economic interest. For example, if a holder of shares buys a put option to sell those shares, the holder retains voting rights on all of those shares, even though it has hedged away at least some of its economic interest. Empty voting can also occur if a shareholder sells its shares after the record date of a shareholder meeting, but before the meeting. In that instance, the shareholder retains the right to vote those shares, even though it no longer has an economic interest in those shares. The release requests comment on, for instance, whether the Commission should consider requiring disclosure of decoupling activities as a possible regulatory response.

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With respect to each of these topics, the concept release describes the concerns that have been expressed by market participants, presents several possible regulatory responses to such concerns, and presents specific questions for public comment.

What are the next steps?

There is a 90-day public comment period for this concept release.

<http://www.sec.gov/news/press/2010/2010-122.htm>