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Time to End Proxy Vote Monopoly: Opinion

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The **Securities and Exchange Commission** has been very busy over the last few months with concept releases and new proposed rules. So, lost amidst this activity, you might not have realized that today is the deadline for comments about proposed changes to proxy system.

Before your eyes glaze over, let me say that it's actually a very good thing. And, unlike most situations, there is one proposed change under consideration on which both investors and public companies are in complete agreement: ending the monopoly enjoyed by **Broadridge**(BR) for counting proxy votes.

Typically, shareholders and general counsels are at loggerheads on how best to reform the voting process for director elections each year. The lawyers protecting the interests of the managers who pay them seek to keep shareholders at bay as best they can. This is why the whole "proxy access" issue generated so much heat earlier this year.

In "proxy access," shareholders wanted to be able to nominate their own representatives to stand for election to a corporate board -- without paying millions of dollars to run a full-blown "proxy contest." The lawyers for management lashed out against "proxy access" stating that such a process would be "hijacked" by nefarious "special interest groups" who would dangerously promote non-business related ideas on corporate boards if elected.

Shareholders countered that director nominees wouldn't get elected without the majority consent of the company's owners, so why would they elect someone who wouldn't best represent their interests?

Even still, by the time the lawyers and corporate "special interests" got through lobbying politicians, the SEC's passed rule on proxy access stated that investors had to own 3% of a company for at least three years before they could even make the nomination. So much for PETA and Amnesty International being able to hijack the process.

But the corporate paid lobbyists didn't stop there. The US Chamber of Commerce and Business Roundtable have recently sued the SEC to stop the newly passed proxy access rule from being implemented.

So, how is it possible that investors and management can come together on the issue of Broadridge holding a monopoly on counting votes? Easy. Both companies and shareholders aren't being well-served by the status quo.

On the company side, they are held hostage to whatever prices Broadridge wants to charge for their services. As the Shareholder Communication Coalition recently argued to the SEC: "The prices for proxy distribution and communications services should be established by open competition among service providers handling these functions, based on value to end users, and not through a fee schedule established by regulators."

On the investor side, there have been recent cases of major mistakes being made when Broadridge conducts its proxy vote counting and tabulation. Furthermore, no independent inspector of elections is given the chance to oversee the process when mistakes are pointed out. Broadridge gets to judge itself on poor performance.

Perhaps the most notorious failure that's happened under the watch of Broadridge was two years ago counting the votes of **Yahoo!**'s(YHOO) election of directors. Recall that this was the first shareholder meeting following Yahoo!'s board's terrible decision to over-reach and demand that **Microsoft**(MSFT) pay no less than $40 to buy the company instead of the reported $34 verbal offer made. Instead, Microsoft withdrew its offer and Yahoo!'s stock dropped by more than half.

Shareholders were obviously incensed and the press showed up at the meeting expecting riots and pitchforks. Instead, few tough questions were asked -- except for my questioning of Chairman Roy Bostock -- and the voting results announced at the end of the meeting -- certified by Broadridge -- said that Yahoo! shareholders had re-elected all directors by a margin of at least 80%.

The press immediately began writing reports that Yahoo!'s shareholders actually weren't upset at all. In fact, it appeared as though they supported the board decision to turn its nose up at Microsoft, not engage in constructive discussions leading to a merger, and institute a "poison pill" that would severely penalize Microsoft if it chose to proceed with a buyout of Yahoo!. It seems as though the voice of Yahoo!'s shareholders had clearly said: "Job well done, board! Thanks for putting our interests first."

Except these vote results were entirely wrong -- and not just by a rounding error or a hanging chad. The results weren't even off by a glitch in the automated computer process which one would assume that Broadridge employs to compile these votes.

If not for Gordon Crawford of Capital Research, one of Yahoo!'s largest shareholders, who clearly didn't agree with the way in which Yahoo!'s board represented his interests in the Microsoft non-discussions, we would never know what a travesty had been done by Broadridge. Crawford stated that Broadridge's results must be wrong, given how he knew he voted and how he thought other shareholders had voted.

His criticism forced Broadridge to do a recount and reveal that -- oops -- they found a "truncation error" in how they added up the votes (which is another way of saying they made a manual human error with their pencils when figuring out the vote tally). So, any time, they said a director was re-elected by, say 80%, they actually should have said 60%.

Why is Broadridge calculating votes by hand -- and then charging monopolistic pricing to companies for doing so? If they screwed up in one of the most highly watched director elections that year, how much and how often did they screw up in all the unwatched elections at smaller companies? There was no "flash crash" report on what happened here, so how do we not know that mistakes are continuing to be made?

One last example comes from last year involving the company recently blamed by the SEC for the "flash crash": **Waddell & Reed Financial**(WDR).

Last year , one of their shareholders put a say-on-pay resolution on the proxy for voting, as they felt management had too generously rewarded themselves after poor stock performance.

Management obviously opposed to motion but grudgingly announced that shareholders had approved the motion at the meeting. Yet, a few weeks later, when they filed their 10-Q with the SEC, they disclosed that a majority of shareholders had rejected the motion. Broadridge blamed a "technological error" and has never provided any additional information on what happened.

And all this is going on when other companies like Georgeson and **Computershare**(CMSQY) are ready and able to provide Broadridge with some real competition here.

It's time for the SEC to end these shenanigans once and for all. And they'll get no objection from shareholders and companies -- only from one monopolistic service provider.