

March 27, 2009

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Via email

Re. File Number SR-NYSE-2006-92

Dear Ms. Murphy:

I am writing to express support for the Securities and Exchange Commission's Proposed Rule Change to Amend NYSE Rule 452 to Eliminate Broker Discretionary Voting for the Election of Directors. This letter incorporates the views previously expressed in my testimony before the NYSE Proxy Working Group in 2005, in a letter to the NYSE dated June 29, 2006 from the International Corporate Governance Network (ICGN), in a comment letter dated June 29, 2006 from TIAA-CREF to the NYSE Working Group, in two comment letters, dated May 22, 2003 and May 4, 2004, from Georgeson & Company to the Commission on the subject of proxy system reform and in an article "What Next for the 10-Day Rule?" that appeared in the *Corporate Governance Advisor*, Vol. 11, No. 5, September/October 2003. I am writing currently in several capacities -- as chairman of Sodali, a governance consultancy and service provider to companies in continental Europe and developing markets, as chairman of the ICGN Cross-Border Voting Practices subcommittee and as a member of the board of directors of Shareowner Education Network (SEN), a non-profit organization whose mission is to develop and educate a network of citizen investors, inform them about their rights as shareowners and facilitate their engagement with corporations for the purpose of creating sustainable long-term value.

The case for elimination of broker discretionary voting in director elections is indisputable. In the words of the Commission and the NYSE Proxy Working Group, ". . . the election of a director, even when uncontested, is not a routine event in the life of a corporation." Indeed, the election of directors is a defining event in the life of a corporation. For this reason alone director elections should not be influenced by an uninformed, standardized default voting procedure.

Opposition to the elimination of broker discretionary voting has focused on issues of cost and achievement of quorum. In my view, cost concerns can be dealt with by the adoption of technological improvements, such as e-proxy, that are now available and approved by the Commission. To deal with quorum concerns, the simplest approach would be to permit uninstructed broker shares to be present for quorum but not cast as votes on the election of directors or other non-routine matters. It would not be difficult to amend Rule 452 to permit such an arrangement. An additional box on the proxy card indicating presence for quorum would facilitate the procedure.

In any case, further investor education about the exercise of voting rights and the importance of director elections is clearly needed. Education of retail investors and beneficial owners is already a priority for SEN, which is concerned that reported declines in retail votes following adoption of e-proxy are increasing the proportion of discretionary votes and distorting the outcome of director elections.

Proportional voting has been proposed and is currently offered by some brokers as an alternative to broker discretionary voting. The Proxy Working Group analyzed this approach and rejected it for reasons that continue to be valid. Proportional voting violates the one-share-one-vote principle, makes questionable assumptions about the intentions of beneficial owners, offers opportunities for manipulation, increases complexity and perpetuates current inefficiencies in the proxy voting process.

The Commission should also consider that broker discretionary voting is a uniquely American arrangement. In my work with Sodali clients and investors in countries outside the U.S., I have found that aside from governance experts there is little awareness or understanding of discretionary voting and no reliance on it by non-U.S. companies. To my knowledge, no other jurisdiction has a comparable system for uninstructed default voting in director elections. Private contractual agreements between investors and their agents often govern voting decisions, but a wholesale discretionary approach is not in line with global corporate governance standards or best practices.<sup>1</sup>

More than twenty years of governance reform -- including exchange listing standards, SEC rules, federal and state legislation, judicial interpretations and global best practice guidelines - - have redefined and strengthened the powers, duties and accountability of corporate directors. Given the importance of the board's role in the governance and strategic oversight of corporations, shareholder voting in director elections is a quintessential act of corporate governance that should not be characterized as "routine" or treated as "discretionary."

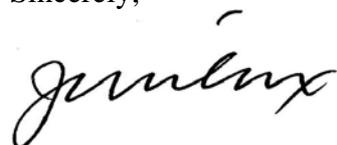
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<sup>1</sup> The Commission should consider *Directive 2007/36/EC of the European Parliament and of the Council*, dated 11 July 2007, dealing with "The Exercise of Certain Rights of Shareholders in Listed Companies." Paragraph 3(b) of Article 10, "Proxy Voting," specifically empowers EU Member States to "... restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions . . . ."

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On behalf of Sodali, the International Corporate Governance Network and the Shareowner Education Network, I urge the Commission to approve the proposed amendment and to make the change effective immediately rather than in 2010. In light of current economic conditions and reduced confidence in the equity markets, director elections during 2009 are more important and more closely watched than ever before. Prompt elimination of broker discretionary voting is necessary to help ensure that the process for electing directors is perceived as fair, credible and free of uncertainty.

Sincerely,



John C. Wilcox  
Chairman  
Sodali  
17 State Street, Suite 300  
New York, NY 10004

cc:

Mary Schapiro – Chairman – U.S. Securities and Exchange Commission  
Kathleen Casey – Commissioner, U.S. Securities and Exchange Commission  
Elisse Walter – Commissioner, U.S. Securities and Exchange Commission  
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Troy Paredes – Commissioner, U.S. Securities and Exchange Commission  
Kayla Gillan --Deputy Chief of Staff  
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Shelly Parratt -- Acting Director, Division of Corporation Finance  
Brian Breheny -- Deputy Director, Division of Corporation Finance