TheAltmanGroup

October 20, 2010
Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. S7-14-10, Concept Release on the U.S. Proxy System (Release No. 34-62495)

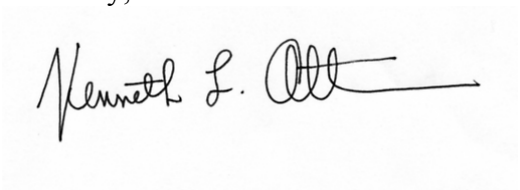
Dear Ms. Murphy:

I would like to thank all of the Commission members and staff who have dedicated so much time and effort in preparing the Commission's Concept Release on the U.S. Proxy System. The issues raised in the release are so numerous, and in some cases so far-reaching and complex in terms of assessing their implications, that it should not have come as a surprise to see only a relatively small number of detailed submissions in response. Indeed, few stakeholders in the proxy system can dedicate the level of resources that the Commission has to analyzing all of the reform concepts discussed in the release.

The Commission should consider prioritizing and focusing on the reform concepts that are the most critical in terms of fixing "proxy plumbing" problems. In this regard, two particular issues stand out above all others: (1) the need for reform of the OBO/NOBO system (through the adoption of any one of three alternatives, including my proposed "All Beneficial Owners" [ABO] process, or what the Commission referred to in the concept release as an "annual NOBO" [ANOBO] concept, or the complete elimination of OBO status, as proposed by the Shareholder Communications Coalition); (2) changes to the plumbing system to encourage competition in the distribution of proxy materials, which would promote innovation and generate cost savings for issuers.

For your consideration, I have attached a short paper detailing my perspectives on the ANOBO and ABO concepts.

Sincerely,



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CONCEPT RELEASE ON THE U.S. PROXY SYSTEM

Comments from
Kenneth L. Altman,
President,
The Altman Group, Inc.

INTRODUCTION

The current proxy system is facing increasing pressures and challenges due to the expectations and demands of shareholders and issuers. As a result, we urge the Commission to embrace certain changes to the existing system as necessary fixes to the proxy plumbing system. Some reconstruction is necessary simply to ensure that the system will meet the expectations of investors for decades to come. In this context, it would be a mistake for the Commission to approach the process of reviewing proposed proxy plumbing reforms as a series of choices between contending interests. Rather, the focus should be on what is necessary and practical to improve the system.

The far-reaching implications of numerous concepts presented in the Commission's Concept Release on the U.S. Proxy System, from changes to the OBO/NOBO (Objecting vs. Non-Objecting Beneficial Owners) system to Client-Directed Voting, also point to a need to set priorities for the review process. I urge the Commission to focus over the next year on proposed proxy plumbing fixes that are the most essential in terms of modernizing and improving the overall system. In this context, my view is that the single most pressing issue before the Commission is modernization of the OBO/NOBO system.

In some respects, the Commission has, through its own recent actions, defined what should be a top priority among the concepts presented in the release. New rules on facilitating shareholder director nominations ("proxy access") require some transparency with regard to the "voting and investment power" of shareholders that will be eligible to use Rule 14a-11.[1] The

[1] SEC's Final Rule on Facilitating Shareholder Director Nominations ("Proxy Access"). See: http://www.sec.gov/rules/final/2010/33-9136.pdf

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Commission has yet to act to enable issuers facing Rule 14a-11 challenges to have a level of transparency concerning "voting power" sufficient to independently verify certain claims made on Schedule 14Ns. A major step towards creating that independent verification capability would be to enable issuers to have full transparency regarding their entire ownership bases as of specific record dates (including the positions of all accounts currently "hidden" behind OBO status).

MODERNIZING THE OBO/NOBO PROCESS

The concept release noted that: "Others…encourage adoption of an approach in which an issuer would be entitled to a list of all beneficial owners, but only as of the record date for a particular meeting. In such a system (an 'annual NOBO' system), objecting beneficial owners would not be able to shield their identity for purposes of a shareholder meeting. At any other time during the year, objecting beneficial owner information would not be available to the issuer or any other party. An annual NOBO system would enable issuers to communicate directly with all of their shareholders, both registered and beneficial owners, for purposes of a shareholder meeting, while minimizing the possibility that the investor information will be used for purposes other than proxy solicitation, such as determining an investor's trading strategies."[2] The primary questions raised in the concept release about an annual NOBO (ANOBO) system were the following: "What are the costs and benefits of the annual NOBO system suggested by commentators? Would disclosure of all beneficial owners, limited to information as of the record date of a shareholder meeting, harm those investors (for example, would it reveal trading strategies of those investors)? Would implementing the annual NOBO system adversely affect any privacy interests of OBOs? As a practical matter, would issuers be able to contact OBOs using this information for subsequent shareholder meetings?"

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http://edocket.access.gpo.gov/2010/pdf/2010-22218.pdf (*Federal Register*, Sept. 16)

[2] http://www.sec.gov/rules/concept/2010/34-62495.pdf

We support the Shareholder Communications Coalition's (SCC) proposal to eliminate OBO status altogether, and enable issuers to communicate directly with all of their shareholders.[3] However, we recognize that some investors do value their OBO status and do not want to open the door to having either capital markets intelligence providers (conducting surveillance and identification of share ownership for issuers) or others tracking their trading strategies. Indeed, the SCC's proposal to have owners who value their OBO status convert over to holding positions through nominee accounts risks actually increasing transparency with regard to trading strategies (particularly so when data on positions held by each separate nominee account can be collected on a consistent basis and then analyzed against public disclosures). Moreover, such a system would end up creating an environment in which larger companies, which can afford to hire "stockwatch"/"surveillance" firms to analyze such data and track large share movements, would have a special advantage over the many smaller companies that would find the costs of obtaining such information more expensive than they can justify.

Rather than adopt sweeping reforms that challenge the interests of some market participants, the focus should be on what is most important for all issuers and shareholders – *improving the accuracy and general confidence in the outcomes of votes*. An approach that balances interests and minimizes disruptions and costs would be a relatively limited event-based disclosure process requiring greater transparency with regard to beneficial ownership (OBO lists in particular), but only in so far as it is necessary to meet the needs of companies and shareholders when it comes to proxy voting and solicitations. Moreover, the requirements of Rule 14a-11 ("proxy access") suggest a need for issuers to be able to independently verify claims regarding "voting power" by shareholders nominating directors on Schedule 14Ns. Thus, should the SEC decide that the SCC's proposal to completely eliminate OBO status goes too far, issuers and shareholders conducting proxy solicitations could be allowed to "pierce the veil" of OBO status for the limited purposes of obtaining event-based transparency with regard to the distribution of "voting power" in a particular security and conducting regulated proxy solicitations. The Altman Group has previously proposed just such a limited event-based process.

[3] Shareholder Communications Coalition Discussion Draft (8/4/09) on "Public Company Proxy Voting: Empowering Individual Investors and Encouraging Open Shareholder Communications." http://www.sec.gov/comments/s7-14-10/s71410-3.pdf

In October 2009, The Altman Group submitted a proposal to the Commission to reform the OBO/NOBO process, which was called an "All Beneficial Owners" (ABO) model.[4] We would like to thank the Commission for taking the time to meet with senior staff from The Altman Group and for citing that original proposal in its discussion of an "annual NOBO" concept in the Concept Release on the U.S. Proxy System (at footnote 163, page 71). We will not repeat here all of the related concepts and proposals contained in our original submission. Rather, we will comment on specific questions posed in the release about the "annual NOBO" concept (quoted below, with The Altman Group's responses preceded by "TAG").

Before we address those specific questions, please note that the ABO concept would cover not only annual meetings of shareholders (as ANOBO does), but also information needs for corporate actions, including rights offerings, exchange offers and tender offers, as well as for required and voluntary regulatory mailings by mutual funds and other issuers. Indeed, it is difficult to see why a process of disclosing ABO/ANOBO lists on a limited and event-driven basis should be restricted only to annual meetings of shareholders. ABO lists of noteholders or bondholders should also be available to a corporate debtor who is either: (1) negotiating a plan of reorganization under Chapter 11 of the Bankruptcy Code, or seeking creditor approval of such a plan; or (2) negotiating or presenting to the Court a "pre-packaged" plan for the approval of its creditors. In addition, both the ANOBO and ABO concepts should enable dissidents conducting solicitation campaigns to have equal access to ANOBO/ABO lists. The flexibility of an ABO approach (limited and event-based) would also enable the SEC to amend the availability of shareholder information as requirements and expectations change along with the proxy plumbing system.

Question 1: "What are the costs and benefits of the annual NOBO system suggested by commentators?

TAG: An ANOBO process, which is designed to enable issuers conducting shareholder meetings and regulated proxy solicitations to obtain lists disclosing beneficial ownership

[4] The Oct. 2009 proposal from The Altman Group was titled "Practical Solutions to Improve the Proxy Voting System," and is available at http://altmangroup.com/pdf/PracticalSolutionTAG.pdf.

(temporarily piercing the veil of OBO status), would: improve the audit trail for votes; enable communications directly with all shareholders; reduce the cost of mail and telephone-based solicitations by enabling those conducting solicitation campaigns to focus their efforts more effectively; and last, but not least, promote increased communications with, and resulting engagement in the voting process by, retail investors currently "hidden" behind OBO status. Moreover, after a higher standard for transparency with regard to "voting power" was established in Rule 14a-11 requirements, and with the Commission exploring whether to potentially regulate "empty voting," the need for issuers to have access to information necessary to independently identify the "voting and investment power" of a specific shareholder is emerging as a fundamental requirement of a workable proxy system.

There is also an issue of fairness concerning access to OBO lists for the purpose of conducting communications with shareholders regarding annual meetings and other events involving shareholder actions. Based on decades of experience in the proxy solicitation industry, I believe that access to ANOBO/ABO lists would affect the outcomes of a significant number of votes -- and help both issuers and shareholders conducting solicitation campaigns. Failure to reform the OBO/NOBO process would maintain a status quo that deprives both issuers and shareholders conducting solicitation campaigns, including those potentially supporting Rule 14a-11 nominations, of access to information that would substantially improve the effectiveness of solicitation campaigns.

The "costs" of failing to adopt at least an ANOBO process are already apparent: lower retail voting participation rates (where many such owners are "hidden" behind OBO status and thus less likely to be contacted by issuers seeking to engage them in the voting process); higher costs for some solicitation campaigns (where increased transparency concerning a company's shareholder base would work to improve the effectiveness of solicitation strategies and provide opportunities to lower the costs of campaigns); challenges surrounding the entire process of having intermediaries managing communications between issuers and beneficial owners (where companies could use OBO lists to confirm with shareholders if they have received proxy materials from their "Street name" holders, as well as encourage them to vote [as many issuers currently do using NOBO lists]); a procedural gap in terms of enabling issuers to independently assess "voting power" eligibility claims in Schedule 14Ns; and a lack of transparency for issuers

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with regard to an audit trail for votes (a problem that could be magnified greatly if the Commission proceeds to regulate, as discussed in the concept release, "empty voting").

The ANOBO/ABO process does not require the elimination of, or even changes in, current procedures for OBO and NOBO selection and management. After all, the ANOBO and ABO concepts are not premised on eliminating OBO status. Rather, using existing processes for requesting NOBO lists, Broadridge or another vendor could provide lists with all of the names, addresses, and share positions of holders of a particular security to an eligible requesting party. Although a system providing disclosures of actual voting and investment power adjusted for shares out on loan and short positions could be a long-term policy objective, the immediate focus should be on providing as much relevant information as possible without changing any of the basic data requirements of the current infrastructure.

Regulation of OBO disclosures could constrain the "use" of list acquisitions to "corporate communications" [17 C.F.R. §240.14a-13(b)(4)] [5] and issues related to shareholder votes and other actions (such as tender and exchange offers). Authorized "uses" could also include assessments by corporate issuers of the distribution of "voting power" in a security for the purpose of reviewing Rule 14a-11 nominations.

Question 2: "Would disclosure of all beneficial owners, limited to information as of the record date of a shareholder meeting, harm those investors (for example, would it reveal trading strategies of those investors)?"

TAG: The risk of harm to investors from the limited and regulated disclosures that would occur under either an ANOBO or ABO process is minimal. Most institutional investors already provide a level of transparency regarding share ownership that far exceeds what would be required under an ANOBO process (via regular and periodic 13f disclosures in particular). The information disclosed through an ANOBO process would be too limited and too ad hoc to be useful for extracting critical insights regarding "trading strategies." Even a service provider working with many issuers to track ANOBO lists would not get a broad view of an institution's

[5] http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4847956d62fe75fc9680a9a82e202bab&rgn=div8&view=text&node=17:3.0.1.1.1.2.78.203&idno=17

industry/sector exposures and holdings as of a single date, since there is no "crowding" effect around a single calendar date with regard to record dates for shareholder meetings.

There are numerous avenues by which companies become familiar with many of their top shareholders long before a record date for a shareholder meeting. The primary value of the ANOBO process for issuers and eligible shareholders conducting solicitation campaigns would come from the identification of retail owners hidden behind OBO status (where the issue of revealing "trading strategies" is marginal, particularly so since the value of that single data point would be very limited as such investors are typically not required to conduct the same level of periodic and comprehensive disclosures already imposed on institutional investors [13F filings in particular]), relatively small positions held by larger institutions hiding behind OBO status (again, where the issue of insight into "trading strategies" is marginal), and positions held by certain foreign institutions.

The bottom line is that disclosure of beneficial ownership to issuers on a very limited annual or event-driven basis, and typically only for a single record date each year (over and above quarterly data required in 13F filings), would likely not even be an issue for most investors. Indeed, we believe that investors interested in managing the costs of solicitation campaigns could benefit from an ANOBO/ABO process if the Commission allows such comprehensive lists of beneficial owners to be obtained by shareholders conducting solicitation campaigns.

Question 3: "Would implementing the annual NOBO system adversely affect any privacy interests of OBOs?"

TAG: The Commission has already established that the "privacy" interests of investors with OBO status must give way to required disclosures of "voting and investment power" when nominating directors under Rule 14a-11 (Schedule 14N), as well as to periodic (limited) ownership disclosures by institutional investment managers exercising investment discretion over $100 million or more in Section 13(f) securities (on Form 13F). Ownership disclosures are also required based on certain events (13Ds/13Gs). Any "privacy" concerns have previously

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given way to *limited or event-based* disclosure requirements that have promoted and sustained confidence in the system.

In fact, not many shareholders with OBO status truly value the designation. The "Investor Attitudes Survey" conducted for the NYSE Group by Opinion Research Corporation in April 2006 found that, given information about the differences between OBO and NOBO status, "very few prefer OBO status, in particular if a $25 annual fee is assessed to maintain the status (14%), much less a $50 one (5%)."[6]

The small number of comment letters from individual investors submitted to the Commission (and posted online through Oct. 19) was insufficient to challenge any conclusions that can be drawn from the NYSE's 2006 "Investor Attitudes Survey." We also note that among the comments submitted by individual investors one can find not only letters urging the Commission to protect privacy interests, but other letters in which individual investors are clearly more concerned about enabling small investors to have more of a voice in corporate decision-making. In the latter case, a critical step forward, in our view, would be to enable companies and shareholders conducting proxy solicitations to engage more retail shareholders currently "hidden" behind OBO status in the voting process.

Among the institutional investors submitting responses (and posted online by the Commission through Oct. 19) we noted an interest in preventing ownership positions from being disclosed "publicly" any more than is required by regular 13F filings. What can be obtained via an OBO list is only one data point that typically reveals little about broader institutional portfolio strategies and may be insufficient, in some cases, for determining the actual "voting and investment power" of an investor in a company (net of shares sold short and shares out on loan). Indeed, the primary issue appears to be not so much regulated OBO disclosures, but whether there might be further regular "public" disclosures that would, over time, reveal more about an institution's investment behavior. Of course, regulating the "use" of OBO disclosures in a manner consistent with existing regulations governing the disclosure of NOBO lists would work to prevent such information from ever becoming truly "public." Moreover, when considering protections regarding OBO list disclosures, we take note that issuers and their agents have many reasons to keep any information obtained from OBO disclosures secret (as they do with the

[6] http://www.nyse.com/pdfs/Final_ORC_Survey.pdf

handling of NOBO lists). If the Commission believes that current regulations governing the handling of NOBO lists have been sufficient to protect against the leakage of such information for any "use" other than regulated purposes, then there is no reason to doubt that application of the same regulatory regime for the disclosure of information containing OBO names would prove to be sufficient.

Comments made in a letter from the Council of Institutional Investors (CII) to the Commission (Oct. 14, 2010) were also notable. Although the Council has "not adopted a policy regarding the current" OBO/NOBO system, the letter did quote the Council's own commissioned "independent study" (Feb. 2010) on the OBO/NOBO distinction to the effect that "…the immediate interest of shareowners and companies in better communications would be better and more effectively served with an incremental approach that supports less reliance on – or eliminates altogether – the OBO/NOBO distinction and otherwise increases the potential for direct communications."[7]

Question 4: "As a practical matter, would issuers be able to contact OBOs using this information for subsequent shareholder meetings?"

TAG: While there should be no constraint on using information from prior record dates, we don't believe that issuers who will need to use such information would rely on dated lists. Issuers will not waste time and money contacting shareholders without clarity concerning the current/recent share positions controlled by shareholders in securities eligible to be voted.

Other Considerations

Another practical matter to consider is that an ANOBO/ABO process might generate a substantial increase in requests for lists from Broadridge. The Commission should seek to

[7] http://www.sec.gov/comments/s7-14-10/s71410-80.pdf. The commissioned study quoted in the CII letter was prepared by Alan L. Beller and Janet L. Fisher (of Cleary Gottlieb Steen & Hamilton LLP), "The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting," Feb. 2010. http://www.cii.org/UserFiles/file/CII%20White%20Paper%20-%20The%20OBO-NOBO%20Distinction%20in%20Beneficial%20Ownership%20February%202010.pdf

ensure that the "reasonable reimbursement" rates set by the NYSE for NOBO (and ANOBO/ABO) lists are truly "reasonable." It is important to note that all of the information necessary to generate either an ANOBO or ABO list is already collected and organized when a mailing by "Street name" intermediaries to beneficial shareholders is set up (processes with costs that are already passed through to issuers). Note that Broadridge publicizes that it can provide issuers with OBO information in reference to the number of shareholders and the total share amount they hold.[8]

The Commission should consider encouraging two separate fee structures for a system with both NOBO and ANOBO/ABO list options. The first would be for a list request for any date other than the record date for a company's annual meeting of shareholders or other types of mailings covered by our ABO proposal. The second should be a much lower cost for "annual NOBO" or ABO requests, since issuers are already carrying the costs (through fees paid to Broadridge) for the collection and management of information to support communications with beneficial owners. For example, ANOBO/ABO lists used for mailings to "Street name" owners or other events that require mailings should be available for a price based not on the # of accounts (as the NOBO lists are priced) but rather the incremental cost of distributing the lists via CD or printed formats.

Reboot of the OBO/NOBO System

After decades of implementation, the OBO selection process needs a reboot. The 2006 "Investor Attitudes Survey" for the NYSE, which raised doubts about just how many OBOs truly value that status, and anecdotal evidence of brokers selecting OBO status for investors who did not understand the implications of that designation both point to the need to implement a system-wide process for all beneficial owners to reaffirm whether they want to maintain their OBO or NOBO status. This process should occur only after ensuring that each investor is educated on the implications of OBO status selection, e.g., through required distribution of educational materials to investors and requirements that brokers explain the implications to investors

[8] See page 34 of the document posted by Broadridge at http://www.broadridge.com/investor-communications/us/corporations/pdfs/Part%207%20AddSrv.pdf

choosing between OBO or NOBO status. While such education would include information about ANOBO/ABO lists, it is important to note that the question of whether to adopt an ANOBO/ABO process is distinct from issues referred to in this section as a potential "reboot" of the OBO/NOBO system.

The concept release observed that: "In order to encourage holding in NOBO rather than OBO status, some have suggested various steps to promote selection of NOBO status, such as educating investors about OBO and NOBO status when they open their accounts and perhaps periodically thereafter. Other steps may involve the elections made by investors when they open their accounts. While our rules contemplate that investors must object to disclosure of their identities to issuers, neither our rules nor self-regulatory organization ('SRO') rules currently require disclosure of the consequences of choosing OBO or NOBO status, or specify broker-dealer policies or procedures with regard to their clients' choice of OBO or NOBO status. In particular, if a securities intermediary's standard customer agreement includes a default election of OBO status, it could promote a less than fully considered election of OBO status. While several broker-dealers have informed us that they currently default beneficial owners to NOBO status, it has been recommended that the default agreement used by all broker-dealers be NOBO status, or that broker-dealers provide informational materials to their customers prior to allowing the customers to elect OBO status and contact customers who elect OBO status periodically to re-elect their OBO/NOBO status."

The Commission has already identified the regulatory gap: "While our rules contemplate that investors must object to disclosure of their identities to issuers, neither our rules nor self-regulatory organization ('SRO') rules currently require disclosure of the consequences of choosing OBO or NOBO status, or specify broker-dealer policies or procedures with regard to their clients' choice of OBO or NOBO status." The solution is obvious: close the gap by requiring disclosure to investors of the consequences of choosing OBO or NOBO status. Imposing the new requirements only for new accounts would, in our opinion, be an inadequate response. There should be a one-time requirement, perhaps implemented over a six month period, for all existing account holders to make such selections only after receiving and confirming that they have read and understand the mandated educational materials and disclosures. After a six month period all accounts without confirmations of either an OBO or

NOBO status selection would change over to a "default" NOBO status. Please note that ANOBO/ABO lists could be made available even before the proposed "reboot" process is implemented.

Promoting Competition

Issuers have a strong interest in seeing more competitive alternatives when it comes to managing mailing costs. As a result, we urge the Commission to adopt reforms that will create more competition in the marketplace for providing mailing and tabulation services. In this context, we would note that an ANOBO/ABO process would be an essential prerequisite for competition with Broadridge when it comes to mailing materials to and tabulating responses from beneficial shareholders.

New Data on Voting Participation Rates (OBOs vs. NOBOs)

We welcome Broadridge's disclosure of a limited analysis of voting participation rates by OBOs and NOBOs in calendar year 2009 (for "over 1,500 meetings"). Their analysis showed that individual account holders with OBO status were slightly more active in terms of voting than individual accounts with NOBO status (15% of the individual accounts with NOBO status voted, while 17% of the individual accounts with OBO status voted).[9] Broadridge's data also reflected the structural problem of chronically low voting rates by retail investors.

It would be interesting to see from Broadridge a comprehensive analysis of voting participation rates by NOBOs when telephone solicitation campaigns are used. Based on our experience in the proxy solicitation industry, we believe that such information would show that higher voting participation rates result from telephone solicitation campaigns directed at beneficial owners whose identities have been disclosed. Indeed, access to either an ANOBO or ABO list for the purpose of conducting telephone solicitation campaigns would have a significant positive impact on voting participation rates by retail owners. Greater voting

[9] http://www.sec.gov/comments/s7-14-10/s71410-125.pdf

participation by retail owners would influence the outcomes of some close votes, and generally increase the influence of retail owners in corporate governance.

CONCLUSION

Reform of the OBO/NOBO process would go a long way towards modernizing and repairing the existing proxy plumbing system. We urge the Commission to focus on proxy plumbing changes that are both practical and relatively easy to implement based on current systems and capabilities. In this regard, the Commission should consider moving quickly to adopt, at a minimum, some form of ANOBO process (which also keeps the current OBO/NOBO system largely as is). We also encourage the Commission to explore implementing a broader event-based ABO process, as well as other reforms that will both improve the accuracy of vote results and increase, through more competition, the cost effectiveness of mailings and tabulations.

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