

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3

4

5

UNOFFICIAL TRANSCRIPT OF THE

6

ROUNDTABLE DISCUSSION ON

7

PROXY VOTING MECHANICS

8

9

10

11

Thursday, May 24, 2007

12

9:13 a.m.

13

14

15

SEC Headquarters

16

100 F Street, N.E.

17

Auditorium L-002

18

Washington, D.C.

19

20

21

22

23

24

Diversified Reporting Services, Inc.

25

(202) 467-9200

1	C O N T E N T S	
2		PAGE
3		
4	Opening Remarks	3
5	Chairman Christopher Cox, U.S.	
6	Securities and Exchange Commission	
7		
8	Panel One - Share ownership and voting	9
9	Moderators:	
10	Erik R. Sirri, Division of Market Regulation	
11	John W. White, Division of Corporation Finance	
12		
13	Panel Two - Broker proxy voting	55
14	Moderators:	
15	Erik R. Sirri, Division of Market Regulation	
16	John W. White, Division of Corporation Finance	
17		
18	Panel Three - Shareholder communications	88
19	Moderators:	
20	John W. White, Division of Corporation Finance	
21	Elizabeth M. Murphy, Division of Corporation Finance	
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(9:13 a.m.)

OPENING REMARKS

CHAIRMAN COX: Good morning. I'd like to call this to order. We're running a bit behind schedule here and we want to stay tightly on a schedule this morning. I'll get started as people are still taking their seats.

Welcome everyone to the SEC's roundtable on proxy voting mechanics. This is our second roundtable on the proxy process this month and we'll have a third tomorrow. Today's roundtable takes us on a very different path from our last one on May 7th. At the last roundtable our panelists included several law professors and state court judges, and they discussed the relationship between the federal proxy rules and shareholders' state law rights.

Today we'll focus on how shareholders' legal rights are very closely connected to proxy voting mechanics. The right to vote on a merger or on a charter amendment, for example, means very little if the votes can't accurately be counted or if the process prevents some votes from being counted at all. Indeed, the effectiveness and efficiency of the proxy voting system directly affects whether shareholder rights under state law can be given full force and effect.

The first panel on today's roundtable is going to address and explain the shareholder ownership and voting

1 system in the context of two recent developments. The first
2 is the increasing technological sophistication in the trading
3 and settlement systems for securities transactions. United
4 States trading and settlement systems are the most liquid and
5 efficient in the world. But as these systems have developed
6 and become more efficient some of the complexities around how
7 trades are now processed, cleared and settled have given rise
8 to challenges in processing proxies and led to problems of
9 under-voting and over-voting of shares.

10 The second development is the increasing prevalence
11 of beneficial stock ownership. The proxy distribution system
12 currently used on the United States was designed decades ago
13 when a majority of investors held physical security
14 certificates and a minority held their securities positions
15 in the name of one or more securities intermediaries.

16 Today, the opposite is true. Between 70 and 80
17 percent of all public company shares are now held in street
18 name. As a result, companies don't know a significant
19 percentage of their shareholder base. They have difficulty
20 in identifying their beneficial owners, and they have to rely
21 on a complex web of intermediaries to communicate with these
22 beneficial owners and conduct proxy solicitations.

23 Understanding the effect of these two developments
24 on the current shareholder ownership and voting system will
25 help inform our views here at the Securities and Exchange

1 Commission as we develop our proposal to amend the proxy
2 rules. Our speakers on this first panel are experts on the
3 voting and solicitation process. They represent major broker
4 dealers and key intermediaries. I look forward to their
5 comments on these issues.

6 The second and third panels will address related
7 issues. The second panel is going to focus on Rule 452 of
8 the New York Stock Exchange, a rule which permits a broker to
9 vote shares on routine matters if the beneficial owner of the
10 shares has not provided the specific voting instructions to
11 the broker at least 10 days before a scheduled meeting.

12 Because many beneficial owners do not regularly
13 vote their shares, broker votes of uninstructed shares help
14 companies reach a quorum at annual meetings of shareholders.
15 The New York Stock Exchange has historically treated the
16 uncontested election of a company's board of directors as a
17 routine matter and eligible therefore for broker voting.

18 Over the past few years, the New York Stock
19 Exchange has had to make increasingly controversial
20 determinations as to what constituted a contest and therefore
21 whether to permit a broker vote. For example, the New York
22 Stock Exchange has determined that Just Vote No or Withhold
23 Vote campaigns when there is no opposing director are in fact
24 routine matters.

25 This has caused some concern by investor and

1 institutional groups, and in response to those concerns, the
2 New York Stock Exchange formed a working group in April 2005
3 to review and make recommendations on its proxy voting rules.
4 In June 2006, this working group recommended that the New
5 York Stock Exchange add the uncontested election of directors
6 as a non-routine matter under Rule 452. That would have the
7 effect of eliminating broker discretionary voting with
8 respect to all elections of directors.

9 The New York Stock Exchange supported this change,
10 and this past October filed a proposal with the commission to
11 eliminate broker discretionary voting on all elections of
12 directors for shareholder meetings starting in 2008. The
13 potential effect of this proposed rule on the cost of proxy
14 solicitations as well as on shareholder vote totals could be
15 significant, and the commission may need to consider the
16 systemic effect of this proposal as we move forward on our
17 proxy rule-making project.

18 I am pleased that members of the New York Stock
19 Exchange Working Group are here today to discuss the NYSE's
20 rule proposal and that other interested market participants,
21 including smaller companies and investment companies are also
22 here to discuss their views.

23 The third and last panel with focus on the
24 shareholder communications system that was established by our
25 Exchange Act rules more than 20 years ago. The panel

1 includes representatives from the business roundtable, broker
2 dealers and proxy intermediaries who will discuss the pros
3 and cons of today's system, in which companies can
4 communicate with their beneficial owners only through the
5 intermediaries who hold the shares in street name and may not
6 communicate with the beneficial owners directly.

7 Many companies have objected to the fact that it's
8 the intermediaries rather than the companies who choose the
9 agent for distribution of the proxy materials even though the
10 companies are responsible for the expense of that proxy
11 distribution. I look forward to a lively discussion on these
12 issues.

13 On behalf of the commissioners and the commission's
14 staff I'd like to welcome our distinguished panelists and
15 thank each of you for your participation in today's
16 roundtable. We have benefitted and will continue to benefit
17 from the knowledge, enthusiasm and willingness of various
18 market constituencies and experts to look at all of these
19 issues objectively and to work with the commission and our
20 staff as we move forward on proposed solutions to these
21 vexing problems.

22 So thanks very much, and I'll turn it over now to
23 the moderators of our panel.

24 MR. WHITE: Thank you, Chairman Cox, and good
25 morning. I'm John White, director of the Division of

1 Corporation Finance. And I am also very pleased to welcome
2 all of you to the commission's roundtable on proxy voting
3 mechanics.

4 I'm also very pleased to be joined today by Erik
5 Sirri, the director of the Division of Market Regulation here
6 at the moderator table. Erik, very pleased to have you here.

7 A couple of procedural matters before we get
8 started. We have prepared a few questions for each panel,
9 which are actually up on our web site if you'd like to see
10 them from an audience standpoint. We also anticipate that
11 the commissioners from time to time may have some questions,
12 and we have asked our panelists to not present any formal
13 opening statements today on any of the panels. Instead each
14 of them, like each of you in the audience or listening on the
15 webcast are welcome, in fact, encouraged to submit written
16 statements and other materials for inclusion in the public
17 comment file that we've established actually for all three of
18 the roundtables that we're doing in this series.

19 I guess the final procedural matter, as each panel
20 nears its close, we will end the discussion phase and then
21 give each of you a minute or so to offer us any closing
22 thoughts or suggestions that you'd like the commission to go
23 away with in terms of closing thoughts. And also, just to
24 ensure that the panels run smoothly we do ask that the
25 panelists and the commissioners who wish to be

1 recognized -- if we don't see you signaling, you can turn
2 your tent card up on end and then we will in fact know for
3 sure that you would like to be recognized and we'll do the
4 best we can to call on you, not necessarily in order but
5 we'll try to call on all of you.

6 With that, Erik, I'll turn it over to you to get
7 started.

8 MR. SIRRI: Thank you, John. Good morning, Mr.
9 Chairman and commissioners. I want to thank everyone for
10 coming to the panel today, especially the esteemed members of
11 this morning's panel.

12 As Chairman Cox noted in his remarks, the world has
13 changed significantly since many of the regulations governing
14 proxy distribution and the processes used to distribute
15 proxies and the way that investor votes are collected. We
16 now live in a world where the vast majority of investors hold
17 the securities in street name. They are no longer record
18 holders but rather are beneficial holders.

19 The manner in which we clear and settle securities
20 transactions in this country is vital to the legal and
21 operational realities of securities ownership, so we're here
22 to ask questions about whether or not there are in fact any
23 problems in this area, how important those problems are and
24 what our options are for crafting an appropriate solution.

25 PANEL ONE - SHARE OWNERSHIP AND VOTING

1 MR. SIRRI: So we have a lot to cover this morning,
2 so why don't we get started? To give us a common language,
3 let me start with Larry Thompson.

4 In fact, let me introduce the panelists. Excuse
5 me, I neglected that. We have six panelists here this
6 morning. The first, on the audience's left, is Lydia Beebe,
7 who is the corporate secretary and the chief governance
8 officer of Chevron Corporation. On her left is Henry Hu, who
9 is the Allan Shivers chair of law and banking and finance at
10 the University of Texas. On his left is Rob O'Connor, who is
11 a managing director at Morgan Stanley. On his left is Ronnie
12 O'Neill, vice president at Merrill Lynch. On her left is Bob
13 Schifellite, who is the president of the investor
14 communications solutions group at BroadRidge Financial, which
15 was formerly known as ADP. And on his left, finally is Larry
16 Thompson, the general counsel of the Depository Trust and
17 Clearing Corporation, DTCC.

18 All right. Now, why don't we get started? Larry,
19 I wonder if you could kick us off. And just take a few
20 moments if you would to talk about the following. You know,
21 the vast majority of publicly traded shares in this country
22 are held in street name. Why is that? What are the benefits
23 of holding shares in street name and what role does a
24 clearing agency such as yours play in the proxy voting
25 process?

1 MR. THOMPSON: Erik, in order to get started it
2 might be worthwhile just to sort of go through what the
3 background is very briefly. DTCC is the principal holder of
4 two of the major subsidiaries in the principal post trade
5 infrastructure here in the U.S. for clearance and settlement,
6 and that is the Depository Trust Company and the National
7 Securities Clearing Corporation.

8 We hold and settle approximately 90, 95 percent of
9 the equity markets here in the U.S. The catalyst for the
10 development of those two principal depositories and clearing
11 corporations was really a paperwork crisis that occurred in
12 the 1960s. And that, as always, that burning platform, which
13 caused all kinds of problems on Wall Street and for the
14 financial services industry, led to major changes which are
15 reflected today.

16 Back in those days, just to give you some sense of
17 it, physical checks and certificates were still exchanged by
18 hand in lower Manhattan. There was a sharp increase in
19 trading, 15 million shares a day at the NYSE, that led to a
20 growing number of fails, and those fails led to a growing
21 number of failures of firms in the Wall Street area. It
22 forced the markets to close on Wednesdays, with reduced
23 trading hours, and it extended the settlement cycle from T
24 plus four to T plus five. So there was a major problem that
25 had to be solved.

1 There was an organization that was formed called
2 BASIC, which was the Banking and Securities Industry
3 Committee. To look into solutions, Congress got involved and
4 the NYSE along with the banking industry came up with a
5 number of solutions they thought to the problem. One of them
6 was to come up with a central securities depository, DTC,
7 where all of the securities would be immobilized so you would
8 not have the physical transfer of money and shares on the
9 streets.

10 The other one was to form NSCC to handle the
11 balancing and the clearing of those securities through an
12 organization called CNS, multilateral netting where
13 essentially you would net down from all of those trades to a
14 factor of about 98 percent. And that was done in 1976. DTC
15 was formed in '73. NSCC was formed in 1976.

16 Congress got involved by passing a series of
17 Securities Act amendments in 1975, which essentially promoted
18 the unified national clearance and settlement systems. And
19 the objectives were efficiency, competition, price
20 transparency, best execution order and interoperability.

21 The CCPs and the CSD all led to those efficiencies
22 and now in today's marketplace what we have is that DTC is
23 the custodian of approximately 85 percent of all of the
24 equities here in the U.S. Approximately \$36 trillion is held
25 in our vaults or through our other intermediaries.

1 All of that is in our nominee named CDINCO. The
2 stock is not re-registered and all of the movements take
3 place through a book-entry system at DTC. It makes
4 settlement faster and less expensive. Key thing here to
5 remember is back when DTC was first formed it cost
6 approximately 88 cents for a trade to be cleared and settled.
7 That now is approximately two cents for that trade, and that
8 doesn't take into account the inflationary factors. So as
9 you can see there were real efficiencies that were grown out
10 of that.

11 DTC is the record holder of all of those shares
12 through CDINCO, and as I mentioned earlier. And as I said,
13 all of that takes place electronically through our records.
14 There are no identifiable shares that belong to any of our
15 participants. The all belong to the name of CDINCO and when
16 a deposit is made at DTC, just as it's made in your
17 commercial bank, you don't know which dollar is yours, you
18 have a proportionate interest in that dollar. So do all of
19 our participants have a proportionate interest in the shares
20 that we hold in our vaults and which we control.

21 And through them obviously the other beneficial
22 holders would have just a proportionate interest. So there
23 are no clear identifiable issues there at all.

24 The other thing that I think we want to talk about
25 here is how the continuous net settlement system works and

1 why that brings such efficiencies to the U.S. marketplace.
2 The way it happens there is if you had 34 million trades, as
3 we approximately had last year, or 70 million total if you
4 look at it in terms of the slides, we will need to net down
5 that to a single figure on each side, either one buy or one
6 sell on each side of that trade.

7 That obviously adds tremendous liquidity to the
8 program. You don't have brokers and banks tying up their
9 capital into trades on a trade for trade basis. They can use
10 that capital to invest in other things, to have their
11 participant base get involved in the U.S. capital markets,
12 and that has led to the U.S. capital markets being as
13 competitive and as efficient as they are at the present time.

14 Again, the benefits of the CNS system, the central
15 fail control. All open fails are marked to the market. It
16 eliminates counter-party risk because NSCC sits in between
17 each one of the buyers and sellers. It becomes the buyer for
18 each seller and the seller for each one of the buyers, and
19 there are a minimal number of fees.

20 Because of this system, we have set a way in which
21 we interact with the issuers. As the record holder of all
22 positions, DTC receives all of the proxies, all of the
23 dividend payments and interest payments and reorganization
24 announcements, and we communicate that efficiently to all of
25 our participant base and to the issuers and/or their

1 representatives.

2 When we receive a proxy from the issuer, we send
3 a -- we will get that, we will create a proxy and we'll send
4 it to the broker dealer, which will list all of the shares
5 that we have on record date. The holdings are in street
6 name, but we in fact will develop it in such a way to make
7 certain that on record date we receive all of the
8 information.

9 So I'll give you an example. Twenty days before
10 record date, DTC will receive information from the issuer,
11 either through search cards, proxy statements, exchange
12 bulletins, issuer letters or file transmissions sometimes
13 from BroadRidge and other co-depositories. On record date we
14 will capture all of the DTC participants and we will figure
15 out which way the vote will go.

16 We'll capture all of the borrower information, all
17 of the stock transfers, all of the tenders. We will create
18 an omnibus proxy and a security position report, which will
19 be provided to the issuer or its representative on record
20 date plus one.

21 Again, going through it, we will get the
22 information in from the exchanges, BroadRidge or the co-
23 depositories. We'll put all of that together on record date.
24 We'll put out an announcement to the street. We'll also send
25 an omnibus proxy of all of those positions.

1 We, by the way, will make certain that that
2 position is correct by balancing on a daily basis with each
3 one of the transfer agents representing the issuer community.
4 We then will send that information to the issuer or the
5 issuer's representative and they will ensure that the vote on
6 approximate basis will take place.

7 And Erik, that really goes through I think some of
8 the mechanics of where we are and gives you some idea of
9 where we are.

10 MR. SIRRI. Thanks very much for laying that out,
11 Larry. I wonder if we could start the general discussion
12 over on the far end there. I wonder if, Lydia, you would
13 talk about the issuer's perspective here. How does this
14 system work for you as an issuer?

15 MS. BEEBE: Well, I actually think Chairman Cox and
16 your opening comments, Erik, talked about a lot of the issues
17 that exist in the current system that I hope get addressed.
18 I think from an issuer's perspective we work with the current
19 system and we do our best to make it work, but we do have
20 this very complicated system with a lot of different
21 interacting and intertwined rules and each piece is kind of
22 made assuming the other pieces so they all interact.

23 And so I guess my message would be that I do think
24 the commission and the staff, you all have a very important
25 opportunity here to address many of these issues before it

1 does become a significant problem. But I think it's
2 important to have a holistic approach.

3 I do think the voting system needs to ensure the
4 integrity of the voting process. And Professor Hu has
5 certainly been one of the key ones calling attention to the
6 over-voting and is probably better able to talk about the
7 specifics, but we do have technology today that enables
8 tracking of voting rights, and I think we could do a lot to
9 ensure that the people, that the voting process -- to improve
10 the integrity of the voting process.

11 Our current voting system, and actually the basis
12 of corporate America, is founded on the premise that economic
13 interests -- people are voting. And we have a system now
14 where the economic interest is not necessarily always
15 connected with the people that vote.

16 And so I think at the very least the connection
17 between the economic interest and the actual voting should be
18 transparent. And so it should be apparent to all who is
19 voting the shares. And I think there -- steps can be taken
20 to improve the connection between the economic interest and
21 those who actually vote.

22 You know, the retail investors were really kind of
23 the key entity that the -- when the SEC was formed it was
24 formed to protect the individual investor. And the retail
25 investors are becoming increasingly minimized in our system

1 because the institutional investors certainly hold most of
2 the shares and they are much more organized and much more
3 diligent I think in voting their shares.

4 But I don't think that means we should further
5 marginalize the retail investor. And in some ways the broker
6 vote has been a substitute for the retail investor
7 representation in some ways. But retail investors do still
8 vote with their feet. And so if they don't like your
9 management or if they don't like your strategy, they can sell
10 those shares.

11 And so in some ways the actual voting, the
12 discretionary broker voting has not necessarily
13 misrepresented the underlying shareholders. But there are
14 difficulties for the issuers to work with those. The
15 NOBO/OBO system has certainly been mentioned. But we could
16 reverse that presumption or even get rid of that presumption.
17 I mean if you own real property it's certainly registered in
18 the courthouse.

19 There are countries that don't recognize that don't
20 recognize that OBO right and if you own a share it's just
21 public information or it's information available to the
22 issuer. And I think with the internet today we have a great
23 opportunity to communicate more directly with shareholders if
24 we had an opportunity to know more directly who they were.

25 And I guess the other area I might mention -- well,

1 I guess there's a couple things. The intermediation that we
2 have -- I mean we have this system that I mentioned earlier
3 and both Chairman Cox and you mentioned that we have all
4 these interlocking pieces, but we have this intermediation
5 system which creates some inefficiencies, redundancies, and I
6 think from the issuer's point of view unnecessary costs.
7 Other countries have used technology I think to introduce
8 systems that substantially avoid the multilayer approach that
9 we have in the United States today.

10 And we certainly have an opportunity to look at
11 this. You might be able to reduce the gap between the record
12 date and the actual meeting date substantially, which would
13 help the voting integrity and the audit trails I think. And
14 I guess the other area that I would suggest is the regulatory
15 structure may need to create some oversight in areas of this
16 process where we don't really have effective competition
17 today.

18 And you know, certainly the broker voting and to
19 some extent the proxy advisory services I would think fall
20 into this category where we really do have these markets
21 being dominated by strong players. And not to say that
22 they're not efficient and don't do a good job, but you know,
23 it's the issuers that pay a lot of this and we aren't the
24 ones that buy the service.

25 And so there's no traditional market control that

1 we have in most of the areas of our free enterprise system.
2 So that is another area that I think merits your
3 consideration. So I think those would be the key areas that
4 I think from an issuer perspective we would hope that you
5 would give some serious thought to, and we would certainly be
6 happy to participate in that process.

7 MR. SIRRI: Well, thank you, Lydia. You mentioned a
8 number of things. IN particular you mentioned the broker
9 discretionary vote and the NOBO/OBO or objecting beneficial
10 owner question. We have panelists following that are going
11 to deal with those explicitly, so I could use a little bit of
12 discretion and maybe treat those in the following panels.

13 You know, between what you said and what Larry
14 started off with it's clear that the broker sits at the
15 middle of this process, so I wonder if I could turn to our
16 brokers. Rob, I wonder if you could perhaps start us off
17 here and talk a little bit about the role that you play
18 because we understand there are different policies and
19 procedures that brokers put in place to deal with the
20 question of beneficial owners. I wonder if you could talk
21 about how your firm deals with that, and then Ronnie, I
22 wondered if you could follow up.

23 MR. O'CONNOR: Thank you very much, Erik. I guess I
24 would say you're right in that we do sit in the middle of the
25 process. Picking up on comments by both Larry and Lydia

1 though, it's important to note -- and I think we started the
2 day with the chairman commenting that we have the most liquid
3 and efficient settlement system in the world. And Larry kind
4 of took us through how that works, and I think we can't lose
5 sight of that as we go through this discussion because
6 anything that we look at doing that would slow that down and
7 put us back in a daze, especially with the increase in volume
8 of trading since the 1960s, that would put us back there,
9 would raise some concerns.

10 Where do we sit in the middle of this process?
11 Larry explained that he'll look at what he has in the box as
12 of a record date, reconciling against movements, et cetera.
13 They're then going to go out to the various participants and
14 give us the number of shares that they have allocated to us
15 as of that particular record date. We then as a firm have to
16 decide how to allocate those shares out to our clients.

17 The first thing we would do is reconcile to see if
18 the number that DTCC is showing us is consistent with our
19 stock record as to our long holders as of that day. If there
20 is no discrepancy, then I think it's fairly straight forward
21 that everybody gets their vote. That's not an issue. If
22 there is some kind of deficiency, then firms need to approach
23 how they're going to reconcile that deficiency or how they're
24 going to allocate that deficiency.

25 And there are two primary ways you'll hear of doing

1 that and there's a few different versions of hybrids between
2 them. But there's pre-balancing and post-balancing. So
3 pre-balancing -- some people may refer to them as
4 pre-allocation and post-allocation. Pre-balancing involves
5 the broker looking at its record and allocating the shares
6 before it sends the cards out. So if you're a holder you'll
7 get a card for whatever number of votes you're actually going
8 to get. Post-balancing you may get a card that shows your
9 position because it very well may be likely that you can vote
10 the entirety of your position because certain people may not
11 return their cards.

12 Switching to pre-balancing for a second, we do a
13 version of pre-balancing, okay, and this is a recent
14 development. We feel that our clients are looking for some
15 greater transparency, some clarity on the number of shares
16 that we're getting. So what we've done is -- and we looked
17 at this long and hard and we had representatives on the
18 various NYSE committees, et cetera that looked into these
19 issues. We made a decision to make a switch to prebalancing.
20 So what we do though is we look at what our record date
21 position is, the number we get from Larry's firm, we then
22 look at the number of segregated clients that we have and all
23 clients who have segregated positions will get a card for the
24 number of shares they can vote.

25 So all fully paid voters, people who aren't running

1 any debits, haven't lent their shares out directly, those
2 clients will get a card for their votes. We feel that it's
3 highly unusual that we would actually have to -- even if
4 there were a deficit in our -- position that we would have to
5 do a post-balancing allocation. Based on some of the
6 historical numbers we've looked at and the industry has
7 looked at we think it's a highly unusual scenario, and
8 therefore we think this is the most efficient way to address
9 this point.

10 Then we look at clients who are running margin
11 debits or who have unsegregated securities. And to the
12 extent that we have excess that would be allocated among the
13 unsegregated shares. So we kind of draw the line of those
14 people who are fully paid, they're going to get first dibs,
15 and those clients who are unsegregated will get a portion up
16 to the entirety of their position of whatever is left over.

17 Firms that do post-balancing, okay, will
18 essentially send the cards out and in the event that there's
19 a need to do an allocation, they will do that allocation upon
20 the return of votes. So that is really the distinction
21 between pre-balancing and post-balancing. It's really a
22 question of -- I think I heard somewhere earlier today, this
23 concept of tracing, you know, marking a vote to a share.
24 Well, there are a number of issues with that. I think that
25 we have developed a system that efficiently does that at the

1 right place and time.

2 So do you do that from day one and you say that
3 each share is somehow tagged with a number and has a vote to
4 it, which I think creates a number of procedural issues and
5 would probably make Larry's life very difficult or do you do
6 that down the road? And when you do that down the road, as
7 long as the broker has disclosed to his clients kind of how
8 it's doing its process, to quote Lydia, the clients will vote
9 with their feet.

10 The don't just do that by selling the issuer's
11 shares, they do that by moving their accounts. If they're
12 not happy with the way you're handling their account they're
13 not going to be quiet about it. They'll let you know. And
14 we are -- and Ronnie, I think would agree with this -- we're
15 a client service business. And if we're not doing what our
16 clients need then we've got an issue.

17 So we are constantly looking at better ways to fix
18 this, but I think the way that we're doing it now is the
19 appropriate intermediary role.

20 MS. O'NEILL: Rob, I would agree with everything
21 that you said as far as the pre and the post. What we find
22 is that most brokers who have primarily institutional shares,
23 institutional clients, find the pre-balancing works to their
24 advantage. Probably the main reason for that is that the
25 institutional clients tend to vote regularly. They have

1 fiduciary responsibilities, so the vote returns on an
2 institutional broker are rather high.

3 In my world, which would be a retail-based
4 situation, most of the clients choose not to vote. We've
5 looked at that from every angle trying to encourage people to
6 vote. We think that a lot of the processes that BroadRidge
7 and ADP have built into their systems have actually increased
8 the vote returns over the years, but we don't know how to get
9 people to actually care enough to vote.

10 Because so many people don't vote a post-balancing
11 broker is going to take the votes that are returned and the
12 great majority of the time is going to be able to accommodate
13 every single person. In fact, at Merrill Lynch where I work
14 we do -- less than one-third of one percent of the meetings
15 have any kind of allocation at all to the folks who have a
16 margin debit balance.

17 So for the most part the differences between
18 pre- and post-balancing give you the same exact result,
19 differences being when you have to make an allocation on the
20 pre-balancing side and some of the people to whom you
21 allocate shares don't vote. That causes one issue. And then
22 the other issue is an issue that I may send out a proxy card
23 for your full position and it turns out that you're going to
24 be able to vote somewhat less.

25 That is disclosed both at the time of the client

1 agreement. It's also disclosed on the actual voting
2 instruction form that we mail out to all of our clients.

3 MR. SIRRI: So, Ronnie and Rob, the way I think
4 about what you just said is that you both have systems to
5 allocate the shares that will be voted. And Ronnie, in your
6 case you essentially let folks vote and then after the fact
7 you try and allocate if there's an over-vote. And Rob, the
8 way I understand what you said is you make a set of decisions
9 up front allocating first to the fully paid shareholders and
10 dealing with things after.

11 The sense I have from listening to both of you is
12 that the system is working pretty well. The sense I had a
13 little bit from listening to Lydia is that there was -- I
14 think you thought that there could be some improvements
15 there. So I'm wondering if you could sort of -- I'm trying
16 to tease out the difference there and why you in a sense, the
17 way I listened to it, come to different places.

18 Lydia, I wonder if you could be a little more
19 precise?

20 MS. BEEBE: Well, you know, we have not had any
21 problems. I mean I have to say I think the broker community
22 does what they need to do in the situations they have. I
23 mean that's the way our system is developed. Everybody has
24 kind of got a system that works for them.

25 You know, I think at the greater scheme of things,

1 just to make it as simple, for me, as simple as I can explain
2 it, we issue a proxy card to all our registered proxy
3 holders, including CDINCO, which then issues an omnibus proxy
4 card to all the people that they held chairs for, including
5 all the brokers, who then issue proxy cards for all their
6 voters. And the shares that are loaned out, then they get
7 another proxy card.

8 And so I think what I was trying to say is the
9 system that we have has -- it's not that any particular
10 individual is not an efficient or not doing the right thing
11 but we have this system that creates this daisy chain, which
12 is I'm not sure the most efficient system that we could come
13 up with if we really tried.

14 And to have more direct communication -- I mean one
15 of the things that Ronnie said was that they haven't really
16 been able to get their retail investors to vote. And I don't
17 know that having the issuers more directly involved will help
18 that, but I think most issuers would like to try.

19 MR. SIRRI: Well, in the last piece I think you
20 referred to a chain here. An important part of the chain is
21 what happens with a firm like ADP or BroadRidge. I wondered
22 if you could talk a little bit about your role in this
23 process and your role in the reconciliation process, what you
24 do.

25 MR. O'CONNOR: Thank you, Erik. First, I think I'd

1 like to just -- the SEC has come to rely on us to always show
2 up with some statistics, so I'll give a few statistics very
3 quickly. But I think the process has been working very, very
4 well, and I think the facts and the statistics support that.

5 So when we look at -- and I really do think it's
6 been a good effort by all the constituents being that banks,
7 brokers, issuers, institutions working together with the
8 leadership of the SEC and the NYSE to move this process
9 along.

10 So what's taking place in terms of investor
11 participation, for this proxy season we expect that quorum
12 percentages for what we represent on the street side on
13 behalf of our bank and brokers will be just about 90 percent.
14 So that is great participation. That is shares. Now I know
15 you'll talk about it later, but about 19 points of that 90
16 percent is attributable to the broker vote. But every year
17 we've been measuring this since 1993 that quorum percentage
18 has moved up. So I think participation is in fact growing,
19 which I think is to everybody's benefit.

20 We also measure efficiencies in terms of cost and
21 the implementation of technology. This proxy season we'll
22 get very close to approximately 50 percent of the accounts
23 that we receive from the banks and brokers will no longer
24 require a physical mailing.

25 So there's big savings of course as a result of

1 that technology that's been implemented, and that comes by
2 way of whether it's e-delivery, a proxy edge product,
3 householding and other ways that we consolidate accounts. If
4 you look just 10 years ago, that number was under five
5 percent. So we're going to be close to 50 percent, and I
6 think that number can continue to grow, and I think if we
7 work together that number will continue to grow.

8 And again, it has taken significant print and
9 postage costs out of the process for issuers. And the last
10 thing I'll comment with regard to stats is really the voting
11 percentages. A large majority, close to 90 percent, will
12 voted electronically. So that's both through proxy edge,
13 which is our institutional platform, as well as the internet.
14 So close to 90 percent of all the shares that are returned
15 will be voted electronically.

16 This next piece of data, which I think is
17 important -- and we talked about over-reporting and
18 over-voting. I think there is a clear distinction to make.
19 Obviously there's been some issues where in the balancing of
20 shares between the broker, what they pass on to us and
21 basically the way the process works is we do get and go out
22 as we get the record date information, go out to our bank and
23 brokers twice basically for every proxy job. We do it once
24 at search. We do it once at record date. We get all their
25 records back. We aggregate them. We report it back to the

1 issuer. We give them those positions.

2 We also now get a DTC feed. With that DTC feed we
3 can now compare DTC's positions and shares to that that's
4 been reported to the broker. We pass that back to them so
5 that they can do their reconciliations.

6 Putting the scope of this scenario, Market Reg a
7 couple years ago reached out to us and said give us a sense
8 of how much of this over-reporting or over-voting is really
9 taking place, and I do apologize that this is somewhat dated,
10 but we would be happy to update it. But we did an analysis
11 that we shared with Market Reg, and this was at the point in
12 time a couple years ago where there were only 10 nominees
13 utilizing this over-reporting service that we had in place
14 for several years.

15 And during that time frame we -- when we are the
16 tabulator for the issuer is the only time we can really
17 measure this, we had 329 jobs in a seven month period and
18 again only 10 nominees. On average, the number of nominees
19 that over-reported their position versus DTC was 31 out of an
20 average group of about 228 nominees being included in each
21 job.

22 So about 31 out of the 228 had an over-reported
23 position. The percentage of shares that that represented was
24 just over two percent. The percent of the shares outstanding
25 was less than two percent. It was 1.79 percent. If that

1 nominee though in fact is on the over-reporting system that
2 we offer they would, if in fact they vote, put them over
3 their DTC limit. We would pen that vote at the DTC level and
4 provide a report back to the broker where they'd be able to
5 reconcile and they would go through the process that Ronnie
6 defined in terms of them doing their allocations or whatever
7 adjustments they needed to make.

8 I'd like to then point out that after there was a
9 lot of conversations about over-reporting and concern, SIA at
10 the time, SIFMA came out with a program to encourage more
11 nominees to participate in this prevention service,
12 over-reporting prevention service.

13 And the next tranche that we measured was from
14 another five-month period where we had 58 jobs. At that
15 point in time there were 100 nominees on the system. And the
16 average number of nominees over-reporting then dropped to 16
17 and the over-reported shares as a percentage of shares voted
18 was .37 percent. The over-reported shares versus shares
19 outstanding was .33 percent.

20 Today we have about 295 nominees on the system.
21 Those 295 nominees represent about 95 percent of all of the
22 accounts that we represent on behalf of the bank and broker
23 community. So the instances of this over-reporting taking
24 place is non-existent I would say for anyone that is on the
25 service. And given that we're covering 95 percent of the

1 accounts I feel very, very confident that this overreporting
2 situation has been dramatically reduced.

3 And the last distinction I'll make is when it comes
4 to -- when I say 'over-reporting,' as tabulator, the
5 tabulators can't and don't vote more shares than they're
6 allowed to vote. So historically what's been done in the
7 past is if there was an over-reported situation, over the DTC
8 level, they would go back to the nominee and look to
9 reconcile with that nominee to bring that share position
10 down.

11 And I think it was done on a materiality basis. So
12 if it was material it would have had some meaning to the
13 meeting, then those conversations would take place. I think
14 if there wasn't any materiality those conversations didn't
15 take place. But we've moved dramatically ahead in terms of
16 some of the technology that we've added working with the bank
17 and broker community to address this issue.

18 MR. SIRRI: Lydia, have you had a different
19 experience than that, because I know you've spoken on this
20 topic before?

21 MS. BEEBE: No, I don't think I would say we've had
22 a different experience. I think the concern of the issuer
23 community is that the attempts to control over-reporting
24 don't necessarily always protect the integrity of the actual
25 vote. The rounding out or topping out of the broker votes

1 may not actually represent what the underlying shareholder
2 votes.

3 And so I think the concern is, you know, I think
4 somebody in the last roundtables used the pre-scandal word,
5 but the concern is when you get to the point when you have a
6 vote, an important vote that's 51.1 to 49.9 and you're in
7 litigation over the shares you're going to be trying to
8 defend all these systems of approximating the correct vote
9 for the actual shareholders. And I think technology can do
10 pretty well for us.

11 And so I guess that's the challenge. Are we close
12 enough to being exactly accurate?

13 CHAIRMAN COX: You know, if I might, this strikes
14 me, listening to this a lot like watching a football game
15 where, you know, the team that has the ball on third down
16 runs it up the middle and both offensive lines pile on top of
17 each other. There's the mass of humanity. The refs go in
18 and try and pry the men apart and they spot the ball and try
19 and guess where the runner's knee went down.

20 And then they bring the chains out and they measure,
21 and they find that it was short by inches. So you've got
22 this mismatch of a rough approximation on the other hand with
23 this attempt at exactitude on the other hand in a close
24 contest. I think one of the things that troubles us here is
25 that that's an illusion of exactitude and we probably have to

1 do a much better job if it really were to matter.

2 MS. O'NEILL: I think that the point that we need to
3 get -- have a system that has integrity is well taken. You
4 also have to look at what would the cost be of actually
5 unwinding various -- the way we hold shares as a fungible
6 mass down to the account level. Many of the markets that I
7 know do have direct registration of the shares and every
8 shareholder has a position that's marked out to them.

9 The voting in those situations is very expensive.
10 There's a huge cost involved in voting. You actually have to
11 have shares that are held at a brokerage house re-registered
12 into the share's name in some markets. And so that actually
13 ends up as a disincentive to people voting and expressing
14 their opinions. And I just think we have to look at whatever
15 we do decide to do. It needs to balance the costs with what
16 we gain.

17 MR. O'CONNOR: If I could just add to that, I think
18 in a number of those markets as well, they are nowhere near
19 as efficient or liquid as the U.S. market. And I think that
20 we have to be sensitive to whether any changes that would be
21 imposed along those lines would reduce liquidity.

22 For example, if you think about it, a simple
23 example where if Ronnie bought shares in her account and lent
24 them out, right, she's still economically long that stock but
25 the vote will go with the stock. And let's say that she

1 lends it to Director Sirri, who short sells that stock to
2 Director White; Director White is now economically long that
3 stock. He is going to have the vote, and he should have the
4 vote. Director Sirri should not have the vote because he
5 lent it out.

6 And I think that if you start to get -- I think we
7 just have to be careful about how you would address movement
8 of that vote because if you do then you reduce the ability to
9 lend stock, and if you reduce the ability to lend stock you
10 decrease liquidity in the market and you definitely take away
11 from, I know, another of the commission's concerns, which is
12 fails. And so I think we just have to be sensitive to
13 collateral effects of any of these.

14 CHAIRMAN COX: If you wouldn't mind, I'll just
15 follow up. Are you indifferent as to the arbitrary rule that
16 might be imposed by the law when shares are loaned concerning
17 who gets the voting right? Does it matter more that we know
18 exactly who has the voting right than whether the lender or
19 the borrower has that right?

20 MR. O'CONNOR: Well, let me step back for a second.
21 When you say the -- am I indifferent to the conclusion of
22 law, the holder of the stock -- let me make sure I understood
23 the question, Mr. Chairman. The holder of the stock has the
24 right to vote that stock until he foregoes that right.

25 CHAIRMAN COX: I'm just talking normatively, not

1 objectively or descriptively, but as a -- if you're writing a
2 rule book, as a matter of first impression is it more
3 important that there be clear rules or when you just
4 described a moment ago that perhaps Sirri shouldn't have the
5 right, is that because you think he shouldn't or that because
6 under this set up we have now he shouldn't?

7 MR. O'CONNOR: My statement there related to the
8 fact that Director Sirri has actually foregone that right
9 contractually, either in the form of a stock loan agreement
10 if he's a fully paid customer who's entering into a
11 securities lending agreement, or under the terms of a margin
12 arrangement if he's incurred a margin debit and has the
13 stock --

14 CHAIRMAN COX: Well, the reason I ask this question
15 is that one way that we can address concerns about peeling of
16 voting rights and people borrowing shares solely for the
17 right to vote them and the consequences, some of which are
18 negative, of disconnecting economic -- at least the interests
19 of most long-term economic holders from voting, would be to
20 have a different rule.

21 MR. O'CONNOR: And I think, Mr. Chairman, it's a
22 fair point. Professor Hu and I were talking about this
23 earlier. And I won't profess to speak for him, but I think
24 that discussions of people borrowing stock to vote are
25 extremely exaggerated, to be conservative.

1 There are rules in place, the Reg T requires there
2 be a permit of purpose for a stock loan. When we make a loan
3 we don't deliver to a hedge fund, we deliver out to the
4 buyer. So in the example that I gave Director Sirri sold the
5 stock short, so Director White would receive the shares. We
6 wouldn't give -- we, and I'm not aware of anybody, I've
7 spoken to some of my major competitors, nobody would loan
8 those shares to director Sirri just to sit long in his
9 account. A, it's inconsistent with Reg T, we believe, and B,
10 you know, again, nobody is seeing this a market.

11 And maybe I'll ask Professor Hu to comment. I know
12 he has a view on this area.

13 MR. HU: Let me offer the general comment that
14 listening to the very interesting discussion reminds me of
15 something that Woody Allen once said, "I took a speed reading
16 course and read War and Peace in 20 minutes; it involves
17 Russia."

18 Now decoupling, we're talking about a phenomenon.
19 Decoupling of voting rights and economic ownership I think is
20 at least as complicated as Russia and I only have two
21 minutes. And so one major point that should be made is that
22 the stuff we've been talking about basically in terms of the
23 decoupling of voting rights and economic interests, the kinds
24 of departures from that, the delinking that we've been
25 talking about basically is a byproduct of this need to

1 accommodate high levels of turnover, high levels of trading
2 and also to accommodate the needs of short sellers and others
3 to have this shared lending system. They're very important.

4 This kind of decoupling is not meant as a tool for
5 corporate control, in terms of battles for corporate control.
6 And from what Larry was talking about and others, you know,
7 that very often, in terms of these errors they are kind of
8 rounding errors, that in most cases they're not going to
9 matter too much.

10 I actually think that the more interesting kind of
11 departure from one vote, one share, where there's decoupling
12 is when, for instance, a hedge fund affirmatively takes
13 advantage of the revolution in derivatives, in particular the
14 over-the-counter derivatives market and certain other capital
15 market developments to deliberately decouple for the purposes
16 of trying to win battles for corporate control.

17 So this very different from what we've been talking
18 about before. And in terms of this decoupling, in terms of
19 how they relate to battles for control you could have a
20 situation that one type of decoupling would be where the
21 hedge fund has far more voting power than economic interest,
22 right? That is so that they have voting power that has been
23 emptied of a corresponding economic interest, and as you know
24 from the Southern California article, what we've called empty
25 voting.

1 And in the extreme case you could have a hedge fund
2 who might have the highest number of votes in a company and
3 yet have zero economic interest or even worse, a negative
4 economic interest. In that kind of situation it would be
5 akin to Osama Bin Laden being the swing voter in our
6 presidential election.

7 Now there's another kind of -- it's not even like
8 the Swiss. At least they don't care, you know? This is
9 Osama Bin Laden, okay. That's the negative economic
10 interest's biggest vote holder.

11 The other kind of decoupling in terms of voting
12 rights and economic ownership really runs the other way.
13 With empty voting you had more voting power than economic
14 rights, all right.

15 Sometimes you might want something that's really
16 the reverse, that's kind of like the reverse, and the way it
17 works is this. Basically if you are clever enough in terms
18 of using -- for instance, a certain over-the-counter
19 derivative known as a cash-sell equity swap, you distance
20 yourself sufficiently from the voting power through these
21 cash-held equity swaps.

22 You can very often completely evade the disclosure
23 rules central to the battles for corporate control, in
24 particular 13D, that you could have a situation where you
25 effectively have access, not only seven percent, say,

1 economic ownership, but flip immediately to a seven percent
2 outright ownership and yet avoid disclosure in terms of the
3 rules that are designed to achieve a level playing field in
4 terms of battles for takeover, the battles for corporate
5 control.

6 That is, that this is an example of what we in the
7 Southern Cal article called hidden morphable ownership. You
8 can quickly morph into these big stakes, that you subvert a
9 system that is really central to a level playing field in
10 terms of battles for corporate control, so that I think that
11 in terms of just decoupling that in addition the kinds of
12 decoupling issues that flow as a byproduct in effect of high
13 turnover rates, the need to service share lending markets, we
14 also ought to worry in terms of whether the U.S. disclosure
15 system, the SEC's disclosure system is modern enough to deal
16 with this other kind of intentional decoupling.

17 MS. NAZARETH: Could I just try briefly I think to
18 answer your question because I think you raised an
19 interesting question, which is if we have this problem with
20 decoupling why don't we just address that issue and say if
21 you're borrowing stock you'll keep the vote or whatever or if
22 you're lending the stock the vote doesn't go with the loan.
23 But the problem even in the simple example that we had,
24 regardless of what Erik's incentives were in borrowing the
25 stock -- in this case we said he sold short, when John bought

1 the stock he expected, as a full owner of the stock, to
2 receive the stock with the voting rights.

3 So that's the problem. Regardless of what
4 everybody's incentives are in this great swirl of transfers
5 of securities, the ultimate person who bought the stock, he
6 just went into the marketplace and bought, he expected to
7 receive the security with the vote.

8 That's why -- exactly, which is where Professor Hu
9 started, which is saying this is enormously complicated. And
10 his example with War and Peace is so apt because ultimately
11 it isn't as simple as just saying, well, let's change the way
12 the contractual rights work with respect to the way the
13 stock -- the economic interests and the voting rights are
14 aligned.

15 MR. HU: I should point out that I'm just easily
16 baffled.

17 MR. SIRRI: Commissioner Casey.

18 MS. CASEY: I just wanted to ask you, Professor.
19 Beyond the theoretical of the various strategies that hedge
20 funds and other participants might be able to pursue, how
21 prevalent do you believe it is, prevalent now? And then what
22 is the potential in the marketplace in light of the use of --

23 MR. HU: Well, for instance, in terms of things more
24 directly related, more closely related to the SEC as opposed
25 to the Delaware Chancery, in terms of disclosure issues it's

1 my understanding that -- from talking with people in the
2 hedge fund industry, both hedge funds as well as
3 practitioners, that very often it's a standard technique to
4 avoid disclosure of these big stakes. So you might pick up
5 for instance 4.7, 4.8 percent in shares and then you pick up
6 additional four or five percent economically and you were
7 counting on the fact through these cash level equity
8 swaps -- in terms of -- you take the long side or the four or
9 five percent equity swaps. The derivatives dealer very often
10 hedges the equity swaps that it offers to its customers
11 through holding max shares.

12 And so very often when their customer decides that
13 they want to cancel swaps, they actually need the voting
14 rights, they call the derivatives dealer, terminate the
15 swaps, and lo and behold, very often the derivatives dealer
16 will sell them the three percent shares instantly. So you
17 instantly pick up the additional three percent, which gives
18 you extraordinary strategic advantage.

19 So the issue is that just kind of evades the
20 purpose of 13D, which is to have this level playing field in
21 terms of these large stakes. Part of the problem basically
22 is, frankly, 13D as well as 13F were basically developed
23 before the emergence of over-the-counter derivatives, before
24 the emergence of these -- the morphability of economic
25 interest in voting power.

1 And so it raises a profound issue in terms of this
2 13D system, which is really central, and 13F to a lesser
3 extent, to this kind of corporate control issue, which is
4 ultimately what we're talking about ultimately, the power,
5 how a corporation's government is rooted in the shareholder
6 vote. And with financial innovation, the OTC derivatives
7 revolution in particular has undermined the integrity of and
8 the transparency of this finely wrought system.

9 MR. SCHIFELLITE: Professor, two points I want to
10 raise. First, on the derivatives, and I don't profess to be
11 the expert on derivatives, but I would just note that I
12 believe there are rules and interpretations under section 13
13 that relate to arrangements you have to get stock and whether
14 or not you need to disclose.

15 But leaving it at that point that there may be
16 rules there that exist already, I just want to bring it back.
17 I always like simple examples, so maybe keeping it -- coming
18 back to a simple example. And I know that short sellers
19 sometimes have a negative kind of reputation in the press, if
20 you will, so let me switch my example to where Director Sirri
21 is a market maker as opposed to a short seller and he's using
22 borrowed shares to sell to Director White. I think we all
23 agree that Director White should have the vote when he buys
24 those shares.

25 I guess I would ask, and the question I was putting

1 to you earlier, aside from derivatives, staying very simply
2 in the securities lending market, have you seen any kind of
3 prevalence if you will of people borrowing to vote stock in
4 the United States?

5 MR. HU: The issue is, in terms of collecting these
6 examples, the kinds of examples involving share lending that
7 we've thus far looked at have occurred outside the U.S., such
8 as the Laxey Partners situation or the Henderson Land
9 situation. In the U.S. you do have Regulation T, which
10 limits this, but I have not tried to do any kind of empirical
11 analysis, and so I would leave it at that.

12 The kinds of share lending examples we're talking
13 about are abroad. But one thing we should point out, and
14 this is not necessarily nefarious or anything like that, the
15 very act of share lending as you've discussed, the very act
16 of share lending, basically you're giving up voting rights.
17 There is a decoupling that occurs from that so that even
18 though in a sense nobody is looking from the borrower end,
19 nobody is borrowing the shares for the purpose of getting the
20 voting rights, looking at it from the perspective of the
21 institutional investor or the pension fund, he's giving up
22 voting rights, right?

23 MR. SCHIFELLITE: Oh, absolutely. And we could talk
24 about it some at a later point in terms of the benefits and
25 the costs of that, but the notion is that there is this

1 decoupling simply from the fact of the lending of the shares.
2 And this decoupling does raise issues.

3 MR. HU: Let me just make one last note to the
4 director, please. I think again, keeping it in the bigger
5 picture of things, to have a liquid market with fungible
6 securities you need to have some kind of securities lending
7 system and the vote has to go --

8 MR. SCHIFELLITE: Our goal is not to develop -- our
9 goal is not to have the perfect coupling of shares and
10 economic interests. That actually is not the goal because,
11 in fact, if you have that kind of system you might end up
12 with a situation where you're actually hurting society
13 overall in terms of limiting the ability to trade quickly, in
14 terms of interfering with the share lending market, which is
15 essential to short sellers and the proper pricing of shares.

16 MR. SIRRI: So we're fortunate to have in fact an
17 exact solution to this problem in the instance between
18 Director Sirri and Director White because by policy SEC
19 employees cannot short shares. So you'd be happy to know
20 that there was in fact no problem.

21 MR. WHITE: There is only one lawbreaker and he's to
22 my right, no -- rule breaker and he's to my right.

23 MR. SIRRI: there is one other question we'd like to
24 touch upon before we bring this panel to a close, and it's
25 the question of the record date. And let me throw this open

1 to anyone. Whether the issue is lending as in the previous
2 discussion or otherwise, we know that voting and the
3 tabulation of shares and the accounting for those shares
4 occurs on the record date, but commentators have raised a
5 question about knowledge of the record date and when you in
6 fact know when the record date will be and in fact what's on
7 the proxy at that time. And there have been discussions
8 about better disclosure, earlier disclosure about the record
9 date and the proxy content, and let me throw this open to
10 anyone on the panel.

11 What are your thoughts about that? Should there be
12 an earlier disclosure of when the record date is and the
13 content of the proxy or are we in, in fact, a fine shape
14 right now?

15 MS. BEEBE: You know, I can't think of any reason
16 why there can't be earlier disclosure. It seems to me like
17 most issuers disclose the record date fairly early, but you
18 don't really set the record date until you set your annual
19 meeting date, generally speaking, and I think some of that
20 depends on just the board schedule and what the board
21 activities are and how it's -- you know, kind of if you have
22 any reason to make any changes.

23 Our record dates are generally set the end of
24 January for a meeting the end of April, and so it's probably
25 set six weeks out. But how that information is shared, other

1 than -- I mean we supply that information to the NYSE and I
2 think Rob and Ronnie will be better able to comment on how
3 soon the actual investors know about that. But there is a
4 lot of lead time if you really follow it to get your shares
5 back.

6 MR. SIRRI: Ronnie and Rob.

7 MR. O'CONNOR: I think the short answer is the only
8 upside I could see is that potentially investors who are
9 active and very interested in voting may use that time to
10 notify -- presuming they act promptly would notify the
11 brokers that would give the brokers more time to get stock
12 back into the box to vote. That would be the only upside, I
13 think, of extending the time.

14 MS. O'NEILL: And if I could add to that, Erik, I
15 think the current system, because the record date is
16 announced 20 days prior to it actually taking place, does
17 allow for the type of transactions that Rob has spoken about
18 where people are getting rid of their hedge positions and
19 such so that they are fully long if they are that interested.
20 That's happening now.

21 MR. SCHIFELLITE: The only thing I would add is
22 certainly hearing from the institutional market they -- I
23 think 20 business days is occurring where there is notice
24 prior to record date, but I think some of the requests now
25 have been could we understand what some of those proposals or

1 what the agenda potentially is for those meetings because
2 that may be the event that would cause them to want to recall
3 the stock or not.

4 MR. SIRRI: Look, I hate to bring this lively
5 discussion to somewhat of a conclusion. Let me ask you, if
6 you will, to summarize your thoughts in a minute or two and
7 in particular maybe, given what we've been talking about, if
8 you have any suggestions for improvements to the current
9 system I wonder if you might highlight that.

10 Let me start at the end. Lydia, would you start us
11 off?

12 MS. BEEBE: Thank you, Erik. You know, I do want to
13 thank the commission and you all for putting together these
14 roundtables because it does strike me that voting in our
15 system was created at a time when voting wasn't all that
16 important. The average vote was 90 percent, and it was just
17 a matter of getting the quorum in so corporations could
18 continue business.

19 And voting is getting increasingly more important.
20 You know, the majority vote for directors, the admin and the
21 proxy advisory services and the influence of ISS. The
22 institutional investors are much more organized and
23 collaborative than they used to be and we certainly are
24 looking at the possibility of proxy access and annual votes
25 on executive comp.

1 And so all those things make it important to get
2 the voting right while we have a chance when we don't have
3 any big problems and when everybody is pretty able to work it
4 out. And so I guess I think that we need to take a look at
5 some of these things. And probably number one is to ensure
6 the voting integrity.

7 I think Chairman Cox sort of captured my thoughts
8 exactly as that sometimes people are going to actually
9 measure exactly who voted on what, and we want to be able to
10 have it be right. The economic ownership is an increasing
11 concern, and as I said, at the very least I think we need to
12 make that transparent and the connect -- to as much extent as
13 possible -- the connection of voting and economic ownership
14 should be strengthened. I would hope that the retail
15 investor wouldn't be forgotten in this and that we could
16 improve our access to communicating with the retail investor
17 from the issuer community.

18 And I talked some about the intermediation and
19 inefficiencies that I think other countries have made some
20 effort in improving. And I thought Ronnie and Rob and
21 Professor Hu's comments were all very valid. I agree with
22 everything they said about being concerned about the impact
23 on the market as a whole. I think that's why my hope is that
24 you would look at this all holistically.

25 MR. HU: The governance of the publicly held

1 corporation is ultimately rooted in the shareholder vote.
2 Hedge funds and financial innovation pose an especially
3 interesting challenge to the historical coupling of
4 shareholder votes and economic interest. The SEC can play a
5 vital role. 13D and 13F are obsolete. They don't capture
6 this kind of decoupling. The prospect looms of voting
7 outcomes decided by hidden warfare using new financial
8 technology to acquire votes.

9 In the Southern Cal article we proposed a
10 modernized, more streamlined SEC disclosure system that
11 better addresses both hidden, morphable ownership and empty
12 voting. Ultimately, perhaps soon, other responses to
13 decoupling may be needed.

14 Which of these additional responses should be
15 adopted? Not totally clear. That will depend in part on
16 information as yet unknown which our disclosure proposal is
17 designed to collect. What we do know is that all existing
18 legal and economic theories of the public corporation presume
19 a link between voting rights and economic ownership that can
20 no longer be relied on.

21 MR. O'CONNOR: Thank you, Erik. I think as we heard
22 this morning there are many views on these issues. We
23 obviously appreciate the opportunity to present one of those
24 views up here today. I would just urge the commission and
25 the staff to consider carefully any action in this area, as I

1 think the current system works fairly well and I think the
2 consequences of a change that doesn't facilitate the omnibus
3 centralized clearing and settlement system could have
4 disastrous consequences in the market.

5 I think that allowing brokers to choose the
6 methodology by which they allocate, which is, in my words,
7 another form of tracing, just at a different point in time.
8 Allowing firms to decide how they're going to do that and
9 disclosing that to their investors is I think the most
10 efficient and best way to take this forward, and I want to
11 thank you for your time and consideration.

12 MS. O'NEILL: First of all, I'd like to thank you
13 for the opportunity to participate in this panel. It's truly
14 an honor to be here with this distinguished group.

15 I hope that we've been able to shed some light on
16 our existing beneficial voting system. It's important to
17 note that the system looks very different today than it did
18 eight years ago when my firm became an ADP client. A lot of
19 the cost has been driven out of the process through
20 innovation. The brokers and the banks, in partnership with
21 BroadRidge, have worked to evolve the system, to take
22 advantage of innovations in technology and to respond to the
23 changing regulatory environment.

24 This relatively brief period of time in history has
25 seen the advent of householding, the development and

1 acceptance of electronic delivery and the introduction this
2 year of vote confirmation. Even today there's a group of
3 brokers, banks and BroadRidge associates working to design a
4 system to offer and implement the notice and access
5 electronic delivery, beginning just a little bit over a month
6 from now.

7 Our voting system fulfills several key goals. It
8 maintains our clients' confidentiality and provides for data
9 security for all participants in the process. It permits
10 clients to control their own experience by choosing to
11 receive materials in hard copy, via electronic means. And it
12 lets them vote either on paper, on the telephone, via the
13 internet or via the newer innovations of the investor mailbox
14 platform. We believe that this control by our clients of
15 their experience leads to greater voting returns.

16 We also hope that you've seen that the system has
17 many tools to assist participants in delivering valid votes.
18 These range from the automated reconciliation tools that
19 BroadRidge offers that allow the participants to allocate
20 voting shares in a manner consistent with their own firm's
21 business model to the confirmation tools that allow investors
22 to be sure that their votes are properly represented at the
23 meeting.

24 The system is very complicated but it's also
25 efficient and reliable and we're always seeking to improve

1 it. And I want to thank you for your attention.

2 MR. THOMPSON: Thank you again for inviting DTC and
3 NSCC to participate in today's activities.

4 NSCC and DTC now clear and settle approximately 6
5 billion shares a day. The innovations that were made in the
6 late '60s and early '70s have worked. And as the chairman
7 said earlier, the U.S. markets are the most liquid and the
8 most competitive in the marketplace.

9 I would tread lightly in tinkering with a system
10 which today, on an average year handles 1.5 quadrillion in
11 transactions, in equity and corporate -- bonds, 8.5 billion
12 transactions yearly, worth 175 trillion dollars. That is a
13 system that works, brings tremendous liquidity to the U.S.
14 marketplace, helps out U.S. investors. I think we have to be
15 very careful how we want to tread in this particular area and
16 tinkering with this system and have consequences which we
17 have not thought up. Thank you.

18 MR. SCHIFELLITE: I would also, like my colleagues,
19 like to thank the commission for allowing us to participate
20 today. I would just conclude by saying that as processes
21 we're always going to look to make this, whatever policies
22 are in place work as efficiently as possible.

23 I think Ronnie really spoke to that issue, and I
24 just end with the emphasis on confirmation. So it is
25 something new that has taken place this year where we

1 are -- we're the tabulator confirming back to institutions so
2 that they know if there was an adjustment made to their
3 shares. They will know that. They get electronic
4 confirmation and every nominee gets a total confirmation.

5 We will look to continue to make this process work
6 and be efficient and be transparent through the audits and
7 other things that we do. Thank you.

8 MR. SIRRI: Chairman Cox.

9 CHAIRMAN COX: I just want to thank everybody. This
10 is a fabulous panel, and I'm just unhappy that life is so
11 short and that we're the Woody Allen speed reading deal here.

12 Thank you all very much for shedding some light on
13 this. And Rob, I did get -- in a follow up comment that you
14 made I got a very clear answer that you think, not only
15 descriptively but normatively that any system that has share
16 lending -- in such a system the vote has to go with the loan
17 shares. I heard you say that so I just --

18 MR. O'CONNOR: Yes.

19 CHAIRMAN COX: Okay. I just wanted to hear that.
20 So on all the unasked questions we'll just stay in touch.
21 And we want to thank you very much for working with the staff
22 and with us as a commission. These are very important issues
23 and your knowledge is going to help us solve these
24 challenging problems.

25 MR. SIRRI: Thank you. Why don't we take a 10

1 minute break, and we'll be back.

2 (Break.)

3 PANEL TWO - BROKER PROXY VOTING

4 MR. SIRRI: Welcome back. Welcome to the second
5 panel on broker proxy voting.

6 The issue of discretionary voting by brokers is an
7 important one. As you know, NYSE rule 452 currently allows
8 brokers to vote on behalf of beneficial owners on certain
9 matters deemed routine by the NYSE.

10 Those that take issue with the broker voting point
11 out that, one, voting by brokers separates the votes cast
12 from the economic interests of beneficial owners, a point
13 that was discussed in our earlier panel; and second that
14 brokers historically have cast their vote in support of
15 management.

16 To date, to address these complex issues we have,
17 again, a number of distinguished panelists, and let me take a
18 moment to introduce them. Starting on the audience's left,
19 the panel's far right is David Berger, who is a partner at
20 Wilson Sonsini. On his left is John Endean, who is the
21 president of the American Business Conference. On his left
22 is Tony Horan, the secretary of JP Morgan Chase. On his left
23 is Cathy Kinney, the president and chief operating officer of
24 NYSE Euronext. On her left is Don Kittell, the chief
25 financial officer of the Securities Industry and Financial

1 Markets Association, SIFMA. And finally on his left is Paul
2 Schott Stevens, the president and CEO of the Investment
3 Company Institute.

4 So why don't we just get started? David, I wonder
5 if I might start with you. In the last panel we learned that
6 most publicly traded shares are in fact held in street name
7 and that the procedures for beneficial owners to vote their
8 securities positions are what they are.

9 I wonder if you can talk about how the NYSE rule
10 permits broker voting to work and some of the advantages and
11 disadvantages of broker voting.

12 MR. BERGER: Sure. Thank you very much, Director
13 Sirri. It's a pleasure to be here.

14 There's been some form of broker voting under NYSE
15 rules for more than 60 years now. The system began as a way
16 of allowing brokers to vote when shareholders did not return
17 a vote. So the way the system was developed in the late
18 1930s was that brokers were allowed to vote if the beneficial
19 owners of shares didn't return a vote within ten days of a
20 shareholder meeting.

21 That system has continued to evolve over the last
22 half century or so, such that brokers are allowed to vote on
23 routine matters where shareholders don't return votes within
24 10 days of an annual meeting. Under the NYSE rules there are
25 18 specific items right now which are considered non-routine

1 matters where brokers are not allowed to vote even if the
2 shareholders don't return their ballots.

3 Primarily the broker vote historically was used to
4 enable votes to be cast on matters such as quorum as well as
5 uncontested elections and other routine matters. As time has
6 evolved the NYSE has evolved with notions of corporate
7 governance to add additional items that were considered to be
8 non-routine, and that's where we got the 18 items today.

9 Most recently the NYSE has proposed following the
10 recommendations of its proxy working group that director
11 elections, even in uncontested cases, be considered a
12 non-routine matter. And that's the current issue, I think,
13 that's before the commission at present.

14 MR. SIRRI: Thank you. Cathy, I wonder if you could
15 talk a little bit about what David alluded to about the NYSE
16 proxy group's role in this and their recommendations, your
17 situation where you do have those 18 conditions and how
18 you're thinking about this set of issues right now.

19 MS. KINNEY: I think that, first of all, thank you
20 all for inviting the exchange to participate in this panel.
21 We think these are very important processes to help advance
22 lots of important issues.

23 I think that the whole discussion about Rule 452,
24 which was initiated by the exchange -- in the prior panel I
25 think Lydia Beebe commented that it's important for us to be

1 talking about these things when we're not under pressure to
2 have to make change but really to give a very -- to be very
3 thoughtful about not only the structure that's in place but
4 the processes that flow from those structures.

5 So we, in I think a continuing evolution of our
6 role in governance, felt that it was very important to make
7 the statement that the election of directors is not a routine
8 matter. And of course that begins to call into question the
9 whole rule 452 and the number of items that we have that are
10 both routine and non-routine.

11 So we called together the proxy working group,
12 which we thought was a very balanced representation of all
13 the interested parties, to review this issue in particular
14 and its effect on issuers as well as the process itself.

15 And I would just say the following. One, I think
16 we still maintain the view that the election of directors in
17 this environment and given the governance and the
18 strengthening of governance among our issuers it would be
19 important for all shareholders to vote.

20 I think number two we have put this in the context
21 of a rule change and filed this with the commission. And I
22 think that it would be important to continue to gather as
23 much comment from interested parties as possible. We have
24 put out and will be putting out an addendum to the report by
25 the proxy working group shortly that will line up with the

1 most recent filing we've made with the commission.

2 So I think that this issue was very important. I
3 don't know how we could conclude anything but the fact that
4 the election of directors is not routine. I know there are a
5 number of issues that people have raised about what the
6 effects are of that change, first and foremost probably
7 quorums, but I think if you think about the statistic that
8 was given previously about share ownership in this country
9 among retail investors, it's only about 19 percent.

10 I think if you think about a prior issue, which was
11 the shareholder voting of equity compensation plans, we made
12 that a non-routine item several years ago. People thought
13 that would be a significant problem with increasing costs,
14 and in fact we only know of one plan that actually did not
15 get voted on by the shareholders.

16 So we're using a number of -- using the past and
17 our experience in the past perhaps to inform the future. But
18 I think it would be important for shareholders to have the
19 right to vote. I think it is important for us to ramp up
20 education, and I think that it would be important for the SEC
21 to publish a rule, if nothing more, to invite more comment
22 and to be more informed about what the entire industry says
23 about this change.

24 MR. SIRRI: You had mentioned education. I wonder
25 in what context did you mean education.

1 MS. KINNEY: Well, I think there are two parts to
2 education. One is we've been working with the broker-dealer
3 community. I think it would be important to standardize the
4 language. If there isn't going to be a change in terms of
5 shareholder communication and if we are going to stay with
6 the OBO/NOBO status, I think it would be important for the
7 broker dealers to have a consistent language when customers
8 open accounts about whether they choose to be OBO or NOBO.

9 But as importantly I think there should be a
10 refreshment of that status periodically, perhaps every two to
11 three years. And I would say third the default position
12 should be NOBO and not OBO.

13 MR. SIRRI: Cathy, could you just -- we're going to
14 have a panel on the OBO/NOBO question. Could you just take
15 two to three sentences to just explain what that is?

16 MS. KINNEY: Sure. When an investor opens an
17 account with a broker dealer they basically designate whether
18 they want to be an OBO or an objecting beneficial holder or a
19 non-objective beneficial holder. If they're non-objecting,
20 that means that there can be communication with that
21 shareholder. Now most people it seems have set themselves up
22 as OBOs and so that precludes communication between the
23 issuer and the shareholder directly and then all the
24 communication has to then go through the broker dealers.

25 We did a study when we started this working group

1 to really find out if investors understood that, and I think
2 we were very surprised that most either didn't remember that
3 they had made such an election or two, they didn't really
4 remember what the difference in the election was. And so I
5 think that's why we were suggesting that if -- I think if you
6 walk back and look at the report, I think we suggested some
7 fundamental change perhaps and perhaps even opening up the
8 communication between the issuer and the shareholder
9 directly.

10 But if in fact we were going to stay with the
11 OBO-NOBO designations, that really has to be focused on more
12 consistently with the shareholder, number one. They need to
13 be clear and understand what they are electing. And we even
14 in the committee, and I think David will tell you, we talked
15 about the idea of recommending, getting rid of that
16 designation completely along the lines that Lydia had
17 recommended earlier.

18 But I think we felt that was probably something
19 that ought to be handled by the SEC since they really have
20 the oversight of the communication between the issuers and
21 the shareholders.

22 MR. BERGER: If I could just add something to that,
23 we have a very interesting and sort of dynamic problem going
24 on with shareholder voting, both from an institutional
25 investor standpoint and from an individual investor

1 standpoint.

2 From an institutional investor standpoint, the
3 reality is that a lot of institutions who own shares in
4 thousands of companies don't find it very overwhelming to
5 make their own individual decisions on individual companies,
6 and so they end up relying upon institutional advisory
7 services or proxy advisory services to make voting decisions
8 just because as a practical matter it's very difficult to
9 follow what goes on in thousands of companies, often whose
10 dates for elections are held within days or actually on the
11 same day as each other. It's just an overwhelming process.

12 For individual investors the problem is slightly
13 different. That is, an individual investor, a retail
14 shareholder, gets a proxy and has somewhere between 30 and 60
15 days to review a great deal of information. And although
16 there's been a lot of strides and efforts make it easier
17 logistically for the individual investor to return the vote
18 over the course of the years the fact remains it's still very
19 difficult as a practical matter for a retail shareholder to
20 review all of the information that's set forth in a proxy and
21 feel like they're making an informed decision.

22 And so the practical reality is most of the time
23 retail shareholders are -- we're not getting the votes back.
24 I think as Cathy mentioned, we need to do a real job on a lot
25 of different levels of helping to educate people as to both

1 their responsibilities and ways that they can influence
2 elections.

3 MR. SIRRI: And Cathy, in your comments you had
4 mentioned that the work of the proxy working group and some
5 of the comments that it engendered -- Paul, I wonder if you
6 could comment on that working group and the NYSE's proposals,
7 especially in light of your position representing mutual
8 funds because in some ways mutual funds are unique here. In
9 fact, they are, if you will, on both sides of this issue in
10 certain ways, so I wonder if you could talk about your views.

11 MR. STEVENS: Erik, thank you. And Chairman Cox,
12 members of the commission, thank you very much for the
13 opportunity to take part in this roundtable.

14 As Erik says, we see this a little bit from both
15 sides of the fence, I suppose, both as issuers of securities
16 and as major institutional investors. Most of my recent
17 attention to these questions has been really from the point
18 of view of mutual funds and closed ends funds as issuers.

19 And I do want to commend Cathy and the working
20 group of the New York Stock Exchange because they wrestled
21 with some difficult issues. And I think it's significant
22 some of the principles that have guided this.

23 First of all, I think there's a principle that not
24 all issuers are created equal. Public operating companies
25 have a different legal regulatory regime than investment

1 companies do, which have a form of federal corporate law to
2 which we're subject, including corporate law that regulates
3 shareholder participation in key decisions and therefore the
4 voting and proxy solicitation process.

5 We also have a somewhat different shareholder base
6 because we serve a different purpose in the capital markets.
7 I think it's significant if you look at the trends and the
8 research that we as well as the SIFMA publish periodically
9 that increasingly Americans are in the securities markets,
10 the equity markets particularly through mutual funds as
11 opposed to direct holdings of securities. And that's
12 reflected in the holdings of different issuers.

13 Public operating companies have on average slightly
14 less than half of their shares held by individuals. Mutual
15 funds have almost two-thirds of their shares held by
16 individuals and closed end funds have almost 100 percent of
17 their shares held by individual retail customers; I think the
18 number is 98 percent. So the difficulties of achieving a
19 quorum for these different issuers is strikingly different
20 and therefore also the costs involved.

21 I think we also need, although I would certainly
22 associate myself with the point that Cathy made about the
23 need for education, we also need to understand that not all
24 shareholders who are subject to the proxy machinery stand in
25 quite the same relationship to the issuer.

1 For example, in one of our biggest money market
2 mutual funds may have five million shareholder accounts.
3 People use those funds really as a substitute or as an
4 alternative to a bank account. Realistically speaking, the
5 prospect that you are going to get them to vote any issue
6 that comes before them is challenging, but certainly it's not
7 likely that they'll respond to an uncontested election of
8 mutual fund directors. So I think as a practical matter that
9 needs to be kept in mind as well.

10 That's not to gainsay the important role that fund
11 directors play or the importance of governance at all, but I
12 think it does give some depiction of the problems of getting
13 people to the polls, if you will, and the costs and burdens
14 of that, that that therefore raises. I'd make two other
15 points. One, we were very pleased to be able to assist in
16 the work of the New York's Proxy Working Group by providing
17 some significant empirical information about the effects the
18 regulatory proposal would have on mutual funds and closed-end
19 funds. And certainly I think many market participants and
20 those who represent them, my association and others, stand
21 ready to be of that kind of assistance to the Commission or
22 to the SROs at any time to try to give some hard data around
23 the costs.

24 What we've found in this instance is that if we
25 went to a system whereby you could not have broker

1 discretionary voting on uncontested elections of fund
2 directors, you would increase your holder costs at a minimum
3 between one and two basis points, depending upon the average
4 account size of the fund, it could be as much as five basis
5 points, and it would much more than double the solicitation
6 costs because the likelihood of having to re-solicit, adjourn
7 annual meetings and things of that nature.

8 One last point, Erik, if I might, and this really
9 goes back to the last panel, I believe our members would
10 likely say that some better process by which they can be
11 notified of not just the record date but what is actually
12 before shareholders at a corporate annual meeting would be
13 useful, because they need that information in order to
14 determine whether to call back the shares that they may have
15 lent and to vote them.

16 So it's not simply a matter of when the meeting is.
17 It's knowing well in advance what is on the agenda of the
18 meeting and being able to determine in an exercise of their
19 own fiduciary responsibilities the significance of that to
20 the fund's investors that's really at stake. And I'll
21 conclude there, Erik.

22 MR. SIRRI: All right. John, you know, in your
23 position as president of the American Business Council I
24 think you've talked about --

25 MR. ENDEAN: Conference.

1 MR. SIRRI: Conference. I'm sorry. I think you've
2 talked about your thoughts about the proposal with respect to
3 small and mid-sized companies. From an issuer's point of
4 view, should broker voting be modified in some way. If you
5 think so, in which way should it be changed?

6 MR. ENDEAN: Well, we agree with the New York Stock
7 Exchange that the concept of corporate governance has evolved
8 over the past few years. In fact, it's hard to imagine
9 anyone would disagree. And we agree in that context that the
10 broker vote should be changed, particularly involving Just
11 Vote No campaigns, the broker vote, because it's typically
12 cast unanimously in favor of management recommendations,
13 serves as a thumb on the scale, just for management, and just
14 vote no campaigns in the sense that it reduces the percentage
15 of no votes to total votes cast.

16 So, interestingly enough, although I represent
17 issuers I think that activists have a very good and in fact
18 unanswerable point on this matter. So the broker vote in our
19 view should be changed. The question is how do you change
20 it. We don't agree that the way to change is by declaring
21 all director elections as nonroutine.

22 It's hard to imagine how an election that is
23 uncontested, the outcome of which is self-evident to everyone
24 and accepted by everyone, is anything other than routine.
25 Inevitably, this is an impact on small and medium-sized

1 companies as the Exchange's proposal to the Commission notes.
2 The costs fall most dramatically on small and mid-sized
3 companies of getting rid of the broker vote for director
4 elections, because typically, small and mid-cap companies
5 have greater Street-side ownership. So, put another way,
6 they have more of an effort to round up the votes to get
7 where they would be in any event.

8 But as I said, I want to come back to the point
9 that we think that the broker vote should be changed, and
10 we've offered, it seems like only yesterday, but two years
11 ago when I addressed the Proxy Working Group. It's really
12 remarkable to consider that I've spent two years on this
13 issue, more than two years on this issue, when there's so
14 many other things to do.

15 But, two years ago I said to the Proxy Working
16 Group that in my opinion, there are two ways to go to solve
17 the problem of the broker vote. One is broker-to-broker
18 proportionate voting, and we'll hear a little bit more about
19 this later with the I guess test marketing that's going on
20 for broker-to-broker vote.

21 And the other alternative, which we kind of find
22 ourselves in the interesting position of aligning ourselves
23 with the AF of L, is simply evolving rules to declare certain
24 kinds of director elections as nonroutine, and that therefore
25 the broker vote wouldn't apply; specifically, Just Vote No.

1 If, under this idea, if the Just Vote No election occurred,
2 it would be considered nonroutine and the broker vote
3 wouldn't come into play.

4 I think these more targeted efforts from our
5 standpoint have a lot to recommend them, rather than simply a
6 blanket refusal to use the broker vote on uncontested
7 director elections. It's important to keep in mind,
8 "routine" is not a synonym for "unimportant." As I sit here
9 and my heart is beating, this is a routine matter, so far at
10 least in my life.

11 (Laughter.)

12 MR. ENDEAN: And I don't think about it at all.
13 And yet the function of the heart is extremely important, as
14 I think we all can agree.

15 The election of directors in most cases is a
16 routine matter. They're uncontested. Everybody knows how
17 it's going to come out. What's important is, after these
18 people are elected, whether they care out their duties and
19 responsibilities to shareholders, to the Commission and to
20 other constituencies appropriately.

21 It seems to me that the focus of good corporate
22 governance ought to be on the actions of directors. And in
23 the case of declaring uncontested elections nonroutine, I
24 don't personally see, given the cost, the added cost, which
25 everyone concedes will happen, what the benefits are. Simply

1 saying, well, it'll make the elections more transparent or
2 they per se should be nonroutine, is an interesting argument.
3 But it is not an argument that is, to my mind, sufficiently
4 backed up to make policy on.

5 And so, in the end, I appreciated the opportunity
6 to meet with the Proxy Working Group. I agree that corporate
7 governance has evolved. I think we can fix the broker vote.
8 And to use a phrase from the last presidential election, I
9 think it should be mended, not ended, as it pertains to
10 director elections.

11 MR. SIRRI: Commissioner Atkins?

12 MR. ATKINS: Yeah. I just wanted to follow up on
13 that, John, because I guess one thing that, when you talk
14 about the broker vote, what your exposition ignores is that
15 it is an agency relationship, is a contractual relationship
16 ultimately. And for those people who are leaving their
17 shares with a broker, you know, they are, you know, it's in
18 the Street name and in the broker's name ultimately. And
19 maybe I guess what I would suggest is perhaps we need to make
20 it more explicit rather than implicit that people who are
21 expecting their broker to vote for them, you know, have that
22 either through their account agreement or something like that
23 made much more explicit than before, rather than just ending
24 it, as you were suggesting for those particular things.

25 I was just curious why, you know, why we can't look

1 to that ultimate agency relationship to help make this clear.

2 MR. ENDEAN: I don't have any.

3 MR. ATKINS: Okay. All right. Well, I just was
4 wondering, because it sounded like you were just making a
5 blanket statement that any, even with a Just Vote No
6 campaigns, it almost sounded like you were saying that it was
7 inappropriate to have that. But I would suggest that it
8 probably would be, if we could make it more explicit.

9 MR. BERGER: There is a -- there has been a
10 proposal that we're going to discuss in the addendum to the
11 NYSE Proxy Working Group report that Cathy mentioned, that
12 was developed by Steve Norman, who is the corporate secretary
13 for American Express, called Client-Directed Voting, which I
14 think would encompass some of the ideas that you are talking
15 about, Commissioner, whereby it would make very explicit to
16 an investor that if they chose not to vote, they could have a
17 blanket instruction that would cancel basically instruction
18 that the broker would vote for them.

19 MR. ATKINS: Right. Because especially when the
20 dog eats the proxy statement or somebody else throws it away,
21 you know, you don't want to be disenfranchised, right?

22 MR. SIRRI: Tony, I wonder if you could comment on
23 your thoughts about broker voting and proportional voting
24 perhaps from the context of larger issuers?

25 MR. HORAN: Thank you very much, and thank you to

1 the Commission for having this meeting. I speak on behalf of
2 JP Morgan Chase, but I do so in its capacity as an issuer.
3 We also have brokerage roles, we have investment advisory
4 roles. So my role here is as a representative of a very
5 diverse issuer community.

6 And that respect, I am both a big issuer and a
7 small issuer. We are big because we have 3.5 billion shares
8 outstanding and a million different holders of our shares,
9 but we're small in that we could call our hundred largest
10 shareholders and reach over 50 percent of the shares
11 outstanding, and we would know who we were reaching.

12 We would not be reaching -- in doing so, we would
13 be accessing a list that represents our institutional base,
14 that could be 65 to 70 percent of the outstanding shares.
15 The other 30 percent that would be represented by the
16 individual shareholders, we can't effectively reach, and it's
17 not just a question of the NOBO/OBO rules, but just simply
18 because it is more difficult and more expensive to reach
19 them. But they're very important to us.

20 Only about half -- we have, of those 65 to 70
21 percent that are institutional, virtually all of them vote
22 for the various reasons, legal obligation or others, they're
23 set up organizationally to do so. They tie into the proxy
24 advisory services. There's a process to handle the proxies
25 coming in, and they get done. For the individual

1 shareholders, and these are a very important group of people,
2 because when we speak of agency issues, it's very important
3 for the management of the corporation to be ruled by its
4 shareholders. Otherwise, you have the agency issue with
5 management.

6 On the other side, with respect to the casting of
7 shares, institutional shareholders for the most part are
8 agents themselves, because they are casting votes on behalf
9 of ultimate beneficial owners. Our roughly 30 percent, in
10 the case of JP Morgan Chase & Co., held by individual
11 investors, are the ultimate owners. So they are the ones for
12 whom they should be able in the best position to make the
13 decisions themselves whether to vote, whether to cast votes,
14 how to cast the votes.

15 But from that group, there's only at best a 50
16 percent participation. So, the issues that I think we are
17 all trying to deal with is what to do with that group not to
18 discourage it, not to disenfranchise it. I think the Rule
19 452 proposal recognizes that the election of directors is a
20 very, very important matter, as John said, it may be routine
21 but not unimportant, even if it's an uncontested election,
22 and so how to deal with that issue.

23 And the alternatives, such as all, as it presently
24 is, or nothing at all, are not the only alternatives. If
25 Rule 452 does change in the way it's proposed, the concept of

1 adding around it the issue of client-directed voting or
2 standing instructions I think becomes very, very important,
3 because it's not just a matter of offering or imposing
4 proportional voting, because if so, proportional with whom?
5 Proportional with other institutional investors?
6 Proportional with the entire base of a broker? Proportional
7 with individual investors?

8 As we watched our shares come in in last week's
9 annual meeting, the first burst of shares that were cast, we
10 presumed to individual investors. The institutions hold off
11 till the end. They wait until the Proxy Advisory Services
12 issue their recommendations. That first group of votes that
13 come in are traditionally very much in favor of management,
14 partially justifying why brokers would cast, when they
15 finally do under the ten-day rule, in favor of management.
16 And it's not to ignore that effect and not to be
17 disinterested in the outcome, because we are interested in
18 the outcome, but we think those other, many of those other
19 shareholders who don't vote would also be inclined, because
20 they can follow the Wall Street rule and sell if they do not
21 wish to hold onto the shares, they would be inclined to vote
22 with management more often than not.

23 And the idea of going out to shareholders, and as
24 part of their brokerage arrangements, asking them to choose
25 intelligently in an informed way whether they wished to have

1 their shares cast proportionally with management, against,
2 management, abstain, and then to have a feedback loop so that
3 the broker goes out and says, based upon what you've told us
4 before, here's the way we are going to cast the vote in this
5 particular matter, unless you come back to us and tell us
6 otherwise, so you have the ability in a particular matter to
7 change that vote.

8 That's a promising idea, and I think it really
9 needs to be coupled with these particular considerations.
10 So, thank you very much for the opportunity.

11 MR. SIRRI: Don, you know, Tony just mentioned this
12 issue of proportional voting. SIFMA has spoken out on the
13 issue, and I think you in fact recommended proportional
14 voting in a number of circumstances. I wonder if you could
15 talk about why you came to that recommendation, how it would
16 work. And Tony raised some particular issues about how you
17 might implement it. I wonder if you could talk to that?

18 MR. KITTELL: Sure. Brokers look at Rule 452 as a
19 way that they can help issuers conduct their business. I
20 mean, I don't think there's any self-interest on the part of
21 broker-dealers to either vote or not vote 452, although
22 there's an indirect interest on the part of brokerage clients
23 that if the repeal of 452 in some way changes communications
24 to clients that perhaps are not welcome, we would be
25 concerned about that.

1 Rule 452 is a voluntary rule on behalf of brokers.
2 The practice over the years has been for them to take
3 advantage of it and vote on its directed shares. The
4 practice has also been to vote for management. In today's
5 environment where corporate governance has reached a more
6 sensitive level, I think the vote for management in an
7 automatic sense implies something that brokers don't want to
8 imply; that they are always supporting management.

9 So, we have gotten into debates about proportional
10 voting. And there are at least three types of proportional
11 voting that have been discussed; one proportional to all
12 votes cast; one proportional to all Street name votes cast;
13 and a third proportional to a broker's own voting
14 instructions that it receives from its own clients.

15 We've tried to address the third method,
16 broker-to-broker proportional voting. We've done it on a
17 voluntary basis in order to demonstrate that it can work, in
18 order to surface problems in implementation or in policy. We
19 have one firm that embarked on a proportional voting strategy
20 over a year ago. We have three more, all of whom were
21 working with the New York Stock Exchange's Proxy Working
22 Group, who volunteered to implement proportional voting this
23 year, and they did so within the last two months.

24 And we have other firms -- we've asked all of SIFMA
25 member firms to look into this, and we have a number of other

1 firms who are in varying stages of analyzing whether to
2 proceed or not. The main issue that we've run into is how to
3 define the universe that the proportional vote is calculated
4 on. And there was a fear, or there is a fear on the part of
5 some people that a broker-by-broker system is vulnerable to
6 manipulation.

7 So what we've tried to say is that we will try to
8 capture individual shareholders or -- that's one way to say
9 it. Another way to say it is to exclude very large, activist
10 kind of shareholders from the calculation in order to
11 safeguard from this vulnerability of manipulation. In each
12 case, the firms that have tried to tackle this definition of
13 what's in the calculation, depends very much on their account
14 structure.

15 If you have a firm that's 100 percent retail, it's
16 very easy. If you have a firm that has a mixture of
17 institutional and retail accounts, depending on their account
18 structure, it may be very easy if they're institutional
19 accounts or if they're activist hedge fund clients are
20 treated in one account structure, it's very easy to carve
21 them out.

22 That's been the issue and what has taken the time
23 to implement this. And I think it raises a question as to
24 whether every firm reaching its own conclusion on how to do
25 this or whether there has to be some kind of broader standard

1 across the board is something that we're going to have to
2 address.

3 And another issue is some sort of threshold on how
4 many voting instructions make up the proportional vote
5 calculation. Obviously, you get to a point where if there
6 are very few instructed votes and a very large number of
7 uninstructed votes, you have a tail wagging the dog kind of
8 situation, which could get us into trouble.

9 It's a little bit too early to tell what the
10 experience is. We do know how to implement it. And
11 Broadridge, together with a number of brokers, are going
12 about doing that, and they're now actually reporting returns
13 on that basis. So we'll see how that works out. We think
14 that it's a superior strategy vis-a-vis a pure for-management
15 vote. We are not going so far as to advocate that
16 proportional voting should be used in contested situations.
17 But we do think that it's an interesting concept in the
18 client-directed voting environment. If we can agree how to
19 do client-directed voting in a way that is acceptable to
20 everybody, proportional voting would be one of the
21 alternatives, we think that clients could select and giving
22 us standing instructions.

23 So we're here to assist in making 452 a viable
24 alternative in the future. We think it would be a shame for
25 452 to be thrown out for all issues when the exceptions make

1 up only less than 10 percent or so of those situations.

2 MS. KINNEY: Erik, I would just like to supplement
3 Don's points, and I think that when the working group -- and
4 David can comment here as well -- I think that when the
5 working group started out, we considered proportional voting,
6 and we thought it had a lot of merit and lot of possibility
7 with one exception, and that was the potential abuse if all
8 clients were included in the proportional voting.

9 It now appears that the industry has come up with
10 some solutions that appear very promising, and I think,
11 again, the work of the proxy working group, the notion that
12 these votes should not be cast for management, the
13 recognition that governance continues to be important and
14 getting more important, particularly with respect to the
15 election of directors, I think has stimulated a lot very
16 important and creative potential solutions to this issue of
17 brokers voting on behalf of retail shareholders.

18 So I think a lot of these things we're going to
19 continue to encourage a great deal, work on the educational
20 side. But I think that a lot of it is a recognition that the
21 election of directors is not routine and that brokers simply
22 cannot vote in routine matters on behalf of retail.

23 MR. BERGER: I think there's also an issue with
24 respect to what currently exists in some of the discussions
25 about whether or not the NSYE should define what is and is

1 not a contested election. Over the years, that's proven to
2 be very, very difficult I think for the NYSE to do. And in
3 the evolution that we have of proxy contests and of Just Vote
4 No campaigns and various -- the relative ease that now exists
5 for people to start a protest vote, I think it places the
6 NYSE from time to time in very awkward decisions if we retain
7 452 in a fashion that says the NSYE has to define whether or
8 not an election is contested, particularly from an a priori
9 situation. It's a very difficult determination.

10 MR. STEVENS: Let me just make one comment, again
11 thinking about proportional voting in the context of
12 investment companies. All of the caveats, as I heard them,
13 that Don made about how you would distinguish between
14 different clients for purposes of assembling the universe
15 that you're voting in proportion to would be there.

16 But there's another wrinkle, I think, which is what
17 matters would proportional voting apply to, then? In our
18 world at least, if you put elections, uncontested elections
19 of directors aside, there's only one other routine matter
20 left for investment companies, and that's the choice of the
21 auditor. And the Commission some time ago decided that it
22 was -- however important auditors are, and they are obviously
23 very important -- that we didn't have to go to shareholders
24 in order to get them to vote to approve our auditors.

25 So, if you applied proportional voting only to

1 uncontested elections of directors, you therefore have
2 created three categories of mutual fund or closed-end fund
3 type votes. You have the routine, the nonroutine and the
4 really nonroutine, which is all the stuff that's nonroutine
5 now.

6 So, there are complexities here as would apply to
7 different issuers once again. And I would just urge before
8 the Commission or SROs go in that direction that we look very
9 carefully about the implications operationally from an
10 expense point of view, and on different issuers of going to a
11 proportional voting system.

12 MR. SIRRI: Don?

13 MR. KITTELL: Yeah. I think we agree with that.
14 Brokers are very careful about voting shares in any kind of
15 controversial matter. And that's why we think down the road
16 a client-directed voting strategy that would move
17 uninstructed shares into some kind of acceptable
18 client-directed environment would be a superior way to
19 address this problem.

20 MR. HORAN: And I would just add that the concept
21 behind the client-directed would be that it would not be
22 limited to the election of directors. It would be, I'm going
23 to say virtually matters. I will not say that there might
24 not be some matters that might be concluded should be outside
25 that. But for virtually all matters.

1 MR. SIRRI: Well, I hate to the bearer of bad
2 tidings, but time is passing. You know, this is an
3 incredibly important and also a subtle issue, what seems you
4 might think would have a simple solution, you all have
5 brought up a number of subtleties in it that I think are
6 quite important.

7 If you would, though, if you'd take a minute or
8 two, I'd welcome you to sum up your thoughts, either what
9 you've already said or any new ideas you have that you'd like
10 to make that haven't come up. David, would you like to
11 start?

12 MR. BERGER: Sure. I'd like to start by thanking
13 Chairman Cox and the Commissioners and Director Sirri and
14 Director White for having us here. I think it's been a very
15 enlightening and interesting panel.

16 The goals I think that we all have are the same and
17 easy to describe. We all want and recognize the need for
18 transparency in an age of corporate governance and
19 shareholder activism. We want to incentivize the retail vote
20 as well as institutional investors to actually vote their
21 shares, and we want to reduce expenses in the system and keep
22 the benefits of the current system which I think
23 are -- there's several of them.

24 I think as we look at the overall system, we have
25 to realize that it's a very integrated and complicated

1 system. I'm not sure if we were starting from scratch today
2 or on a blank slate we would come up with the same system,
3 but it works remarkably well. The reality is that the
4 overwhelming amount of shareholders get their proxies in in a
5 timely fashion, their votes counted, and the system does work
6 today.

7 I think as we look at Rule 452 that historically
8 that rule has worked very well for issuers as well as
9 investors. But I do think the time has come as we go into
10 this new age of corporate governance, for the NYSE at least,
11 to step back and not have a rule that provides for brokers to
12 vote for shareholders in uncontested elections.

13 That said, I think there are a lot of alternatives
14 that are interesting and floating out there, and we will
15 continue to look at these alternatives as a way of figuring
16 out what's the best way to meet the goals that I think we all
17 share.

18 Thank you.

19 MR. SIRRI: John?

20 MR. ENDEAN: Well, let me second my thanks to
21 everyone for allowing me to participate. And I guess I agree
22 almost with everything that David has said. One of the
23 things that has emerged from this roundtable for me today is
24 just how, despite my complaints that I've been on this for
25 over two years, just how new this argument still is, and just

1 how many ideas are starting to appear.

2 I hope that, particularly in regard to the
3 proportional voting project that SIFMA has undertaken, that
4 it continues, that it's continually evaluated, and the
5 benefits and problems that proportional voting may raise are
6 evaluated correctly. I would hate, under the circumstances,
7 to see us move immediately to get rid of the broker vote as
8 it pertains to shareholder elections, because it would raise
9 the cost of the proxy process, particularly for mid-size and
10 smaller companies, without really changing the nature of the
11 vast majority of director elections.

12 I think reform is possible. I think many of my
13 fellow panelists have come up with some interesting ideas. I
14 hope that they are all pursued, and I hope that they are not
15 cut off by simply getting rid of the broker vote for all
16 director elections.

17 MR. SIRRI: Tony?

18 MR. HORAN: I think we are African American that in
19 the institutional investor community, there are a lot of very
20 thoughtful people, and I count among them the colleagues on
21 my Asset Management team who think through their voting
22 policies and try to do so in the best interests of what they
23 consider to be good governance, the particular issues that
24 come before them at the time, and the interests of the
25 beneficiaries of the positions.

1 The issue that we're specifically focusing on now
2 are the broker non-votes, and those are associated with the
3 ultimately beneficial owners themselves. And so the way to
4 find them a way to have their voice expressed I think is
5 very, very important. Just the elimination of the broker
6 non-vote has the adverse effect of leaving out a lot of
7 people who I think might expect or hope that their vote would
8 be cast.

9 So some of these other alternatives, and perhaps
10 the timing issue of integrating that with the Rule 452 change
11 might be worth considering.

12 MR. SIRRI: Cathy?

13 MS. KINNEY: I'll only be additive to what has been
14 said. I think there has been clearly an evolution in
15 governance. I think the focus on the election of directors
16 is critical and vital to effective governance of issuers. I
17 think that the possibility of a change in 452 has shined a
18 light on the relationship between the brokers and those they
19 represent. And I think a number of solutions are emerging,
20 which have a lot of promise in recentering and refocusing the
21 agency relationship between the shareholder and the agent
22 that is voting on their behalf.

23 And I think that we can safely go forward with, as
24 I said earlier, publishing this rule and trying to continue
25 to keep pressure on ourselves to find a solution that is

1 effective in restoring the appropriate governance in the
2 election of directors between the shareholder and their vote,
3 particularly in light of retail investors.

4 And so, we're just going to keep pressure on
5 ourselves and on our committee and on the industry to
6 continue to advance lots of creative solutions in a world
7 where I think -- I can't imagine anything that's more
8 important right now than who are the directors on the boards
9 of our public issuers.

10 MR. SIRRI: Don?

11 MR. KITTELL: I think we have the most effective,
12 most cost efficient, most reliable proxy processing system in
13 the world. And that's not an accident. It's the result of
14 tremendous investment in technology. It's the result of
15 tremendous negotiations over the years among all the parties
16 that you see represented in the panels this week. And it's
17 the result of regulatory oversight by the New York Stock
18 Exchange and the SEC for many, many years, who have debated
19 these issues.

20 The system is performing well. All the metrics we
21 use on cost and on service level are excellent. We have some
22 work to do with issuers who question their ability to
23 communicate, and they question the integrity and accuracy of
24 the system. We believe that the issuers can communicate
25 effectively with all their shareholders. They can send any

1 communication they want whether it's NOBO or an OBO, they can
2 do it in a timely manner, and they can do it in a
3 cost-effective manner.

4 We also believe that the accuracy and integrity
5 issues are more of a policy nature than a processing and
6 accuracy or auditing nature. There are differences of
7 opinion on how to handle margin accounts and fails to
8 deliver, and maybe we need to work on that and to educate
9 people. But I don't think it's an accuracy or an integrity
10 issue.

11 We think Rule 452 is a very useful rule, and we are
12 working to try to maintain it as best we can. Proportional
13 voting is one way to do it. But we also think that down the
14 road some sort of client-directed voting solution is a better
15 solution than just voting, having brokers voting uninstructed
16 shares.

17 We have over the years worked with the various
18 issuer groups and investor groups and regulators, and we hope
19 to do so in the future.

20 Thank you.

21 MR. STEVENS: I just want to say thanks once again
22 for allowing me to participate. And we're pleased to be able
23 to voice our support for the proposed amendments to Rule 452
24 as filed yesterday by the New York Stock Exchange with the
25 SEC.

1 MR. SIRRI: Chairman Cox?

2 CHAIRMAN COX: Well, I know you're looking to me to
3 ask another round of questions, right?

4 (Laughter.)

5 CHAIRMAN COX: I wish that I could, but I want to
6 just add the Commission's thanks for each of our panelists'
7 participation. We're learning a great deal by listening to
8 this conversation and also by reviewing all the documents
9 that you provided us with ahead of them.

10 So, thank you very much for what is the
11 commencement of a dialogue that will continue. As you know,
12 we intend to do a rulemaking on this topic this year. So
13 this very, very timely and very significant.

14 MR. SIRRI: All right. We intend to have a very
15 short, five-minute break while we get the next panel up here
16 on Shareholder Communications.

17 (A brief recess was taken.)

18 PANEL THREE -- SHAREHOLDER COMMUNICATIONS

19 MR. WHITE: Welcome back to our final panel of the
20 morning on Shareholder Communications. I am joined at the
21 moderator table by Betsy Murphy, who is Chief of the Office
22 of Rulemaking in the Division of Corporation Finance. I
23 should also mention that she has participated as the observer
24 in all the NYSE's Proxy Working Group activities and is quite
25 an expert on the subject, so I'm going to be turning to Betsy

1 from time to time as we go forward here.

2 In this panel, we want to look generally at the
3 structure for -- of how companies communicate with their
4 beneficial owners. It's a topic that has come up a number of
5 times this morning. I also would like at the end to spend a
6 few minutes exploring how the use of the Electronic
7 Shareholder Forum, which was discussed at our first
8 roundtable two weeks ago, might provide an alternative method
9 of communication. So we'll kind of save that as a topic near
10 the end.

11 So let me introduce the panel, starting at the far
12 end. Anne Faulk, who is the CEO of Swingvote. Tom Lehner,
13 who is the Director of Public Policy at the Business
14 Roundtable. Kevin Moynihan, Managing Director at Merrill
15 Lynch. Bev O'Toole, Vice President at Goldman Sachs. And
16 Charlie Rossi, Executive Vice President at Computershare and
17 also the President of the Securities Transfer Association.

18 Thank you all very much for being here, our final
19 panel of the morning. What I'd like to do is start I guess
20 with the first and kind of basic question, which I'm going to
21 direct to you, Tom, to start with, and then I'll switch over
22 to Kevin, who may have a different view.

23 But under our existing proxy rules, the question
24 is, do companies have an adequate means of communicating with
25 their beneficial owners? And of course, I was suggesting

1 that you put in a petition. You said it actually preceded
2 you by six months at the BRT, but obviously the BRT has put
3 in a petition to us on rulemaking in which you seem to be
4 answer this question no. But I -- can you elaborate a little
5 bit?

6 MR. LEHNER: Sure. Well, first let me say, there's
7 nothing like being the first speaker before lunch. But to
8 answer your question, in a word, no. I think there's been a
9 lot of agreement. We've heard some of this today, that the
10 system is relatively outdated. It's cumbersome. It's
11 indirect.

12 And I don't think we're alone in our view on that.
13 I think earlier we heard a little bit from Cathy Kinney of
14 the New York Stock Exchange when they had a Proxy Working
15 Group they identified some of the inadequacies in the current
16 system. And a couple of years ago, we were joined in our
17 view and in our effort to have the system reexamined and
18 reformed by, you know, some pretty prominent groups that work
19 in a lot of the details of this, the National Association of
20 Corporate Directors, the National Investor Relations
21 Institute, Security Transfer Association, and the Society of
22 Corporate Secretaries.

23 You know, not to belabor the point, but our basic
24 premise is that the owner contact information, it's held by
25 brokers and banks. And in order for companies to communicate

1 with them, they can't do so directly. They've got to go
2 through them and go through other intermediaries.

3 That is not to say that the system hasn't had some
4 success and has not worked well, and I think generally it has
5 worked well up until now. But given all the advances in
6 electronic medium and technology and so forth, and also given
7 this environment of increased shareholder activism and
8 increased need to improve upon communications, we should
9 certainly take advantage of the opportunity, and the system
10 can and should be improved upon.

11 MR. WHITE: Kevin?

12 MR. MOYNIHAN: First of all, I'd like to thank the
13 Commission and the Commission staff for having me here today.
14 It's an honor to be participating in this discussion.

15 Brokers really are intermediaries, and the system
16 that has evolved as explained by DTC over the last 30 years
17 has so many benefits for the efficiency of the system, I
18 don't think there's any real way of backing up and making the
19 system work differently.

20 Brokers are in the business of doing transactions
21 for clients and advising them. We're not really in the
22 communication business. By the same token, we're willing to
23 facilitate any kind of communication issuers wish to make to
24 our clients, and Broadridge, which has the biggest proportion
25 of the market in terms of servicing brokers and banks, has

1 means to communicate within 24 hours any communication that
2 an issuer wants to communicate.

3 Obviously, it's a complicated process. If you're
4 doing it in connection with a proxy meeting or an annual
5 meeting and there's been a record date struck, you spin the
6 computers and you create a record list of shareholders at
7 that point in time. To communicate more often requires to go
8 through that process again. It does get to be an expensive
9 process.

10 It used to be that issuers sent out semi-annual
11 reports, but issuers stopped doing that several years ago, I
12 think mainly because of the cost. But, you know, I think
13 working on the stock exchange's Proxy Working Group for the
14 past 18 months, the brokers have been saying all along, we're
15 willing to work with the issuers. Let's sit down and find
16 practical solutions to the desire to communicate more. But
17 communication is expensive, and it really, at the end of the
18 day, I think is a question of expense.

19 MR. WHITE: Commissioner Campos?

20 MR. CAMPOS: Just very quickly. How should we look
21 at the fee that brokers get and then share with the other
22 intermediaries for communication? Does that -- is there an
23 incentive with that one way or the other? How does that work
24 in your view?

25 MR. MOYNIHAN: The stock exchange prescribed fees

1 are designed to reimburse brokers for their costs. Until
2 eight years ago, Merrill Lynch was in the business of
3 providing proxy services for ourselves as well as other
4 brokers. And we finally decided we didn't have the economy
5 of scale to make it economic to stay in that business, so we
6 sold our business to ADP.

7 I think Broadridge will tell you that most brokers
8 receive nothing from the proxy process. The reimbursement
9 goes to cover the costs. Most of the proxy expenses these
10 days are postage and printing, not the fees involved with
11 getting the communications out. So, I don't think there's
12 ever been any concept of the element of the reimbursement of
13 costs for the process of distributing the material has any
14 element to encouraging communication.

15 Now having said that, Merrill Lynch last December
16 launched what we called the Investor Mailbox. So with our
17 online access to Merrill Lynch, a client can log on and see
18 his mailbox of all his pending proxies. And that kind of
19 facilitation of using technology to enhance the ability for
20 retail investors to see their pending proxy votes and decide
21 right then and there whether they want to vote them
22 electronically is the kind of thing the industry could do
23 more of.

24 MR. CAMPOS: A follow up. If there were to be a
25 reduction or even elimination of this intermediary fee, you

1 know, what impact would that have?

2 MR. MOYNIHAN: Well, you know, the expense of
3 distributing materials for eight or ten thousand meetings a
4 year is considerable. You can see it by Broadridge's
5 revenues.

6 MR. CAMPOS: But couldn't brokers be the charging
7 agents to the clients, as opposed to the issuers?

8 MR. MOYNIHAN: I suppose that's a decision for the
9 Commission to make, to decide whether the cost of
10 communications --

11 MR. CAMPOS: I'm asking you to sort of explore it
12 and give me the pluses and minuses of it.

13 MR. MOYNIHAN: I think -- well, for one thing, I
14 think there's a number of reasons why the retail
15 investor -- I've been in the brokerage industry 30 years, and
16 I think I've learned something about the retail investor
17 behavior. And the fact that retail investors only vote about
18 30 percent of the time is I think from the fact that today,
19 investors are diversified in their portfolios. So if they
20 own 20 or 30 stocks and they own two or three hundred shares,
21 there's not a huge incentive to vote any particular stock.

22 Secondly, investors vote every day. They sell
23 their stock. I think one could argue that holding a stock is
24 a vote for management. When retail investors do vote, they
25 vote 99 percent in favor of management. So, you know, as far

1 as shifting the cost of that process to the investor, I'm not
2 sure what really it accomplishes, because retail investors
3 are sort of speaking already and saying they have limited
4 interest in voting because it doesn't really mean that much
5 to them.

6 We debated it at the Proxy Working Group, how can
7 you increase consumer investor voting? I think the only
8 answer is spending money, and a lot of money. And, you know,
9 I live in Connecticut. We had an election last November, a
10 very competitive election. I think \$40 or \$50 million was
11 spent on the election, and I think 40 percent of the
12 electorate turned out. So, it's a matter of spending money.
13 And someone's got to spend that money. Brokers are not in
14 the business of communicating for the issuers.

15 MS. O'TOOLE: I would just add that there's a lot
16 of questions about the fees that, you know, the brokers and
17 Broadridge -- you know, Broadridge collects and then pays
18 back to the brokers any, you know, over-allotment. But one
19 point I'd make that my Proxy Department made pretty clear to
20 me, even though we've outsourced this function to Broadridge,
21 there is still considerable effort internally in having this
22 proxy system work well.

23 We have a robust proxy infrastructure in house, and
24 they manage the relationship with Broadridge. They oversee
25 an audit of what Broadridge does, and they perform certain

1 services that Broadridge doesn't perform. And as a result,
2 the Proxy Department is by no means a profit center.

3 MR. WHITE: Bev, I know this topic has been a topic
4 of spirited conversation at the subgroup of the Proxy Working
5 Group that you're on. Could you tell us a little bit about
6 the back-and-forth there?

7 MS. O'TOOLE: Sure. As you know, the New York
8 Stock Exchange did a great job putting together the Proxy
9 Working Group and getting lots of different viewpoints and
10 presentations from all the stakeholders. We formed a
11 subcommittee on this very topic to discuss shareholder
12 communication, and this was done because the recommendation
13 of the Proxy Working Group to make director elections
14 nonroutine led to many people feeling we needed to address
15 shareholder communications simultaneously.

16 As you can imagine, no conclusions were reached,
17 but my main goal on the subcommittee was to try to understand
18 what specific issues or problems issuers had with the current
19 system. I was a bit of a broken record on this. There are
20 general assertions about how cumbersome and expensive the
21 process is, but I was hoping and still hope we can talk about
22 specifics to see if there are ways to address problems in the
23 context of the current system before overhauling a very, you
24 know, expensive and time-consuming process built up over many
25 years.

1 Some other key points I would make up that came up
2 through the Proxy Subcommittee, and my views on them in
3 particular, I do think the current system works. And I say
4 this from the somewhat unique perspective of being issuer's
5 counsel at a broker-dealer. So wearing sort of two hats, I
6 think that it is very important for issuers to reach their
7 shareholders, and more so now than ever. I couldn't agree
8 more with that.

9 But I also feel we have the ability to do that. We
10 can send out any message to shareholders in a very effective
11 and efficient manner. In fact, a company with which I am
12 intimately familiar, had a supplemental proxy mailing
13 required this past season. Friday, late afternoon, the
14 decision was made to mail. And early Monday morning, those
15 mailings went out, both electronically and by paper. And it
16 could not have been done any more efficiently in my view.

17 MS. MURPHY: Charlie, you're on the record-holder
18 side of the proxy distribution business. If the Commission
19 did decide to change the shareholder communications rules to
20 let companies have the NOBO list to distribute proxies
21 directly to the beneficial owners, how would that change the
22 system?

23 MR. ROSSI: Okay. Well, first of all, thank you
24 for inviting the Securities Transfer Association here today.
25 It's a topic that we are vitally interested in on behalf of

1 our issuers.

2 On an analogous front, today transfer agents
3 provide a similar service for 401(k) plan providers as well
4 as employee plan holders. We take files in today from a
5 variety of sources and combine it with a registered database
6 and leverage the technology that we have in place. That
7 could be the Internet, our interactive voice response for
8 voting, householding, a lot of the similar things that
9 Broadridge does today, we actually do.

10 If issuers were allowed to get the nonobjecting
11 beneficial owner information, we would do the same thing. We
12 would take this information in. The first priority we would
13 have would be to reconcile it. We would combine it with the
14 other shareholders, which by the way would greatly facilitate
15 the Commission's notice and access model. Because then we
16 would take some of the guesswork out of how many people might
17 call in to get paper, which is a main ingredient of the
18 expense side of notice and access which we're working with
19 our clients on.

20 So, putting the information together, reconciling
21 it, leveraging the technology, a lot of which is in place
22 today. One of the concerns that the brokers have had is not
23 so much divulging the names to the issuer. It's pretty much
24 divulging the names, are the names getting into the hands of
25 their competitors? So what we would do is we would obviously

1 enter into privacy arrangements and confidentiality
2 agreements with the broker-dealer so as to retain those
3 accounts in their name and not subject them to other
4 broker-dealers getting their hands on them.

5 Obviously, the details, the mechanics of this would
6 have to be worked out, but I'm sure with all of the industry
7 representatives, some of whom are round this table, we could
8 get it done. And it would allow issuers access to their
9 beneficial owners and create transparency that isn't there
10 today.

11 And I agree with someone who said, you know, what's
12 happened over the years because of the cost of getting
13 information out to the beneficial owners, issuers have
14 stopped communicating with their beneficial owners except for
15 annual meeting time. The cost is very high.

16 MS. MURPHY: Thank you. While we're still on the
17 subject of NOBO list, I just want to go back to Tom just for
18 a brief minute and ask about the BRT petition. It focused on
19 companies getting access to the NOBO list for proxy
20 distributions. What about shareholders? We got a number of
21 comment letters on the petition that are on our web site, and
22 some of those said, shouldn't shareholders also have the
23 right, then, directly to use the NOBO list directly for
24 distributions?

25 MR. LEHNER: Right. And, you know, I think it's

1 certainly appropriate for shareholder groups and shareholders
2 individually to communicate with one another for those
3 purposes. I think clearly in today's environment where you
4 have concerns about, you know, spamming protection and
5 privacy protections with respect to, you know, outsider third
6 parties, if you will, that those would have to be safeguards
7 that would have to be built into the system.

8 But if such a system were built, and it also
9 enabled shareholders to communicate directly with one
10 another, you know, far be it from me to object to that.

11 MS. MURPHY: Thank you. We've already had some
12 mention this morning about the OBOs and the NOBOs, and the
13 fact that in the BRT petition the idea would be that there
14 should no longer be a category of objecting beneficial
15 owners. And would you tell us a little bit about your views
16 and about whether shareholders should be able to have -- to
17 keep their identities confidential?

18 MS. FAULK: I think it's important, and while
19 Swingvote doesn't have a dog in this fight, to go back to the
20 genesis of the corporate governance industry and to
21 understand that the Department of Labor got involved in this
22 arena because corporations were pressuring their investment
23 banks, their commercial banks and their investment managers
24 to vote in ways that made management happy but were not
25 necessarily in the best interests of the shareholders.

1 And I think anybody in the corporate governance
2 business would tell you that one of the unintended
3 consequences of the NPX filings was to take a number of
4 mutual funds who were absolutely at the forefront of good
5 governance and engagement, and once they had to post how they
6 voted on the shares of their clients, there was a dramatic
7 change. And those mutual funds who were, like I say, very
8 much engaged in the process all of a sudden became rubber
9 stamps for management.

10 So, my background, having been involved in this for
11 almost 20 years, is that the confidentiality of the voter is
12 absolutely critical. Also, for the objecting beneficial
13 owner on the retail side. An investor should not lose the
14 right to privacy just because he's invested in a company.
15 And whether it's an employee of a company or someone who just
16 doesn't want to be called at dinner, shareholders should
17 absolutely have the right to that privacy. And I think to
18 start tinkering with that is a very dangerous thing.

19 At Swingvote, we founded the company based on the
20 idea that the confidentiality was key and that that should
21 not be something that was ever in danger. But also having
22 said that, to understand that it's very important to
23 companies to be able to talk to their shareholders, now more
24 than ever, with the majority vote for directors, with hedge
25 fund activism. Companies are really beginning to understand

1 that, whether it's the institutional investors or even now
2 particularly the retail investor, you have to engage them.
3 You have to be able to talk to them.

4 So what we did, we had the same idea that Chairman
5 Cox and the Commission did, which is let's use technology to
6 facilitate this communication so that you give companies the
7 abilities to easily talk to the shareholders, you give
8 shareholders the ability to maintain their privacy, and that
9 you do this in such a way that everybody gets what they want.

10 So, one of the things that we built into our
11 platform -- and Swingvote originally started as a delivery
12 and voting platform for institutional investors. And nothing
13 is more important to companies than to be able to talk
14 quickly to their institutional investors.

15 So, part of the technology that we built, which we
16 just received a patent on, is a thing called Electronic
17 Solicitation, that allows a company to send us a text
18 message, an audio message or a video message that gets
19 embedded in the ballot. So it gives companies the ability to
20 talk to their shareholders, literally at the moment of
21 decision, to be able to explain a proposal, clarify an issue.

22 And the other thing that we look at Electronic
23 Solicitation particularly on the retail side is, if you want
24 to engage the retail shareholder, if you want to get people
25 to start voting, you have to do three things, all of which

1 technology can do. You have to make it easier to vote. You
2 have to make it easier to communicate.

3 You have to educate -- well, I said three. You
4 have to make it easier to vote. You have to educate the
5 retail investor, and part of Electronic Solicitation is to
6 give individual investors access to the same conversations
7 that institutions have enjoyed for years, and that is to be
8 able to hear management talk about why we need this
9 particular proposal or to put something into context or to
10 clarify an issue.

11 Institutional investors have always enjoyed that.
12 So part of engaging the retail shareholder is to give them
13 access to these same conversations, and as well as to make it
14 interesting. Let's face it. Nobody ever read a proxy
15 statement and was riveted by the language. The
16 transparency -- except for this fellow right here.

17 (Laughter.)

18 MS. FAULK: The transparency and the actual
19 communication is the key to engaging retail shareholders.
20 And how do you do that? It's a you too world. You want to
21 talk to him face-to-face or as close as we can do that for
22 you, which is take a video, explain why you need to reprice
23 the underwater options or why you've selected these
24 particular directors and talk to your shareholders at the
25 moment they're going to make that decision.

1 All of this is based on the key to corporate
2 governance is confidentiality of the shareholder.

3 MR. WHITE: Commissioner Atkins?

4 MR. ATKINS: Yeah. And I just wanted to follow up
5 on one statement you made, because I agree with you. I
6 applaud your efforts. But you had made a statement earlier
7 that with the publicizing of votes by mutual funds that they
8 tend to vote more for management than otherwise. I was just
9 curious if you had any empirical evidence of that, because I
10 guess what we've been hearing is more that mutual funds are
11 now treating it like a compliance function, and they have
12 pretty much outsourced every -- or many of them have
13 outsourced this to some of these proxy advisory services, and
14 then they slavishly pretty much follow what is being advised
15 to them.

16 So I was just curious.

17 MS. FAULK: Well, I think regulation has had one
18 intended consequence, and that is to make people very
19 reticent to vote outside of their policies. Because that's
20 something that people look at, and whether it's looking for a
21 pattern of conflict of interest or just unhappiness of
22 management to say, you know, you usually vote for things for
23 management and you voted against us on this.

24 So I think one of the unintended consequences of
25 that is to have mutual funds be more dependent on proxy

1 advisors. It's also the insurance of being able to point to
2 someone else and say they made us vote against that. That
3 was not something we ordinarily would have done. And it's
4 not empirical evidence, but it is having been in the
5 corporate governance business and knowing the history
6 of -- when I say activism, I don't mean anti-management
7 activism, but an interest in good corporate governance and a
8 collaboration about how you push companies to -- how you push
9 boards to be more advocates for shareholders, and some of the
10 shareholder rights.

11 The very mutual funds who used to be famous for
12 this now are being pilloried because all they do is vote with
13 management. And I believe that has to do with the fact that
14 they used to have air cover to do the right thing, and now
15 because it is so public, they are more reticent about taking
16 a stand to vote against the proxy of somebody whose billion
17 dollar pension fund they may manage.

18 MR. ATKINS: Well, I think that's -- well, I mean,
19 this whole issue probably, you know, after four years of a
20 rule like that, it probably ought to be part and parcel of
21 what we're looking at.

22 MR. WHITE: Commissioner Campos?

23 MR. CAMPOS: I'm interested in just having a
24 response, because I've had institutional investors indicate
25 to me, and I'm sure to other Commissioners, that they have

1 basic suspicions of a direct -- of a system in which the
2 issuers control the shareholder list.

3 And that may come from some of the, you know, the
4 historical pressures and so forth and maybe feeling that if
5 they want to get their particular issues to the other
6 shareholders going through the issuer, you know, could create
7 a situation where it slowed down, where it's not
8 effectively -- they drag their feet and do other things that
9 could work on the outcome.

10 Now maybe there's an obvious technology solution or
11 a mechanic solution, but that seems to be something that's
12 out there, and I wouldn't expect that -- I would expect that
13 we'd get a lot of those kinds of comments if we were to try
14 to go to a direct issuer communication system.

15 MR. LEHNER: I think it's a good question, and it's
16 certainly a fair one, one that's been raised before. And our
17 perspective is we don't view it as an issue of control. We
18 view it as an issue of access. And I think there are certain
19 technological ways to build that kind of system. I'm not the
20 expert on that, but there are a lot of people, probably a lot
21 of them in this room, that certainly are.

22 Just to put a little bit different perspective on
23 what Anne was saying, you know, confidentiality is, you know,
24 certainly one aspect of good corporate governance, but I
25 think in today's day and age, the key that we're all trying

1 to address here, whether it's proxy access or voting
2 mechanics or, you know, rules of the stock exchange, we're
3 all trying to foster better communications.

4 And, you know, investing in a company, if we're
5 talking about individual shareholders that are NOBOs and
6 OBOs, and certainly this is true of the institutional
7 investors as well, you know, that's an affirmative act. And
8 effective communication at the end of the day should be a
9 two-way street. And when we discuss shareholder rights and
10 effective communication, I think we have to understand that
11 with those shareholder rights, also comes shareholder
12 responsibility.

13 And I do not think it's unreasonable -- with all
14 deference to privacy concerns, and I think they should be
15 addressed -- I do not think it's unreasonable for individual
16 shareholders not to have their contact information made
17 available to the companies that they have chosen to invest
18 in.

19 MS. O'TOOLE: I'd like to respond. I think the
20 clients at the brokerage firms take their privacy rights very
21 seriously. They have to actively choose to be OBOs, and I
22 agree with the points Cathy made in the prior panel. Maybe
23 it's re-soliciting to make sure they understand. It's
24 education and it's re-soliciting to make sure that they're
25 choosing to be OBOs and that they understand that.

1 MR. CAMPOS: I'm not addressing the confidentiality
2 point, which I think has been very well made. What I am
3 saying and trying to get reaction on is the idea that
4 shareholders would have to go to the issuer to communicate to
5 the shareholders -- to other shareholders. And the idea that
6 that is a -- maybe not an honest broker in their minds.
7 Well, right now, however expensive it is, whether through
8 ADP, through the other services, it's an expensive but,
9 quote, "indifferent and honest broker" in terms of getting
10 the communication out. How do we solve that concern?

11 MS. O'TOOLE: Well, I think that's a valid concern.
12 And if we had an investor on the panel, I'm sure it would be
13 raised by now, too. But I do think that the problem is the
14 tabulation, not only just the communication. Because if the
15 issuer is taking over the process, just for the NOBOs, let's
16 presume, presumably they're taking over the tabulation as
17 well, and that's where I think it actually gets quite
18 troublesome.

19 MR. CAMPOS: I'm still hungry, but I guess I have
20 to pass, because I'm not getting any more feedback on that
21 issue.

22 MR. LEHNER: I could add a little bit to that.
23 It's not as if under an effective communication system the
24 investor would always have to go to the company. The
25 communication should properly flow the other way as well. My

1 point is that they should do so without having to go through
2 intermediaries, whether they're brokers, banks or, you know,
3 other service providers.

4 And again, I think with the technology that exists
5 out there, it makes it very possible for that to happen. A
6 company, you know, and the proxy season is several months
7 long, as we all know. And given the costs associated and the
8 cumbersome process involved, the companies typically sends
9 out its annual represent, and then they send out a proxy
10 statement. And that's pretty much it. But there's no reason
11 why under a different system there couldn't be several
12 communications that go out to address concerns as they're
13 raised during the proxy season.

14 As, you know, we all know, proxy season, the issues
15 as they're discussed and debated, the conversation evolves.
16 And, you know, our view is we want to give companies every
17 opportunity to put their viewpoint forward so that the
18 investors have the benefit of having as much information as
19 possible so that they can make informed decisions. They
20 don't always vote. But we want to make sure that that's not
21 because they're not getting adequate information that is, as
22 Chairman Cox has talked a lot about, is, you know, easily
23 understandable and in plain English as well.

24 MS. MURPHY: Chairman Cox?

25 CHAIRMAN COX: Well, I'm pleased to hear the drift

1 of the conversation headed toward technological solutions
2 because a lot of the difficulty that we have had in the past
3 has focused on who has access to the shareholder list, who
4 pays the costs of distributing information to the
5 shareholders, how do you preserve the shareholders'
6 confidentiality that they request, and so on.

7 All of these issues are rendered either moot or
8 very susceptible of easy solution if we're operating in an
9 Internet world. The encryption and unique identification
10 that it offers, you know, helps you with the confidentiality
11 piece. The idea that Anne, you've been talking about, of a
12 communications hub or an information consolidator, is
13 something that would be extremely convenient for brokerage
14 customers. In fact, I think you already do some of that.
15 You were talking about your mailbox and so on. That's the
16 way you're going anyway.

17 So that what we're really looking at in the future
18 is global distribution of information that can be linked to
19 other servers. It might not be clear to me when I go to my
20 brokerage web site of the future and I click on Your Mailbox
21 or what have you that I'm actually linking to things that are
22 residing on the servers of the issuer, or maybe it's a
23 service that you contracted for with Swingvote.

24 There are so many different ways to skin the cat.
25 But I'd just be interested in hearing you talk about what in

1 the future we might do to sort of have our cake and eat it on
2 these points.

3 MS. FAULK: Let me speak to that, because that's
4 really sort of the mission of Swingvote. If you begin with
5 the ability for a company to talk to its shareholders from
6 the ballot, and I think as fast as the world changes and as
7 fast as corporate circumstances change, it's not a one-time
8 thing. You can send a message to your shareholders. You can
9 come back six days later and say maybe we didn't make
10 ourselves clear, and this is the reason why you ought to vote
11 with us.

12 The idea is to facilitate that communication or
13 build that bridge, if you will, so that they can start
14 talking to each other and ultimately move this away from the
15 ballot; that there will be a corporate communication utility
16 that's run so that there's a central place that you can hear
17 from your -- the managements of the companies in your
18 portfolio, as well as a central place where you as a
19 shareholder can communicate back to the company.

20 So whether it is --

21 CHAIRMAN COX: And do you contemplate also that
22 you'd be able to communicate with other shareholders that
23 way?

24 MS. FAULK: We have. That's the thing that freaks
25 everybody out, so, that's kind of the one piece that's going

1 to be left as the final evolution. But absolutely. A place
2 where --

3 CHAIRMAN COX: I recognize that our proxy rules
4 inhibit that right now.

5 MS. FAULK: But technology is available to have one
6 platform so that you could come to hear from the CFO of one
7 particular portfolio company talk about the stock option
8 plan, the chairman of the nominating committee can talk about
9 why they've selected their directors, where instead of having
10 access to the ballot, a shareholder could go to the company's
11 web site, see exactly what the search firm and the nominating
12 committee are looking for, recommend or suggest a director,
13 attach a resume.

14 What we're trying to do is build collaborative
15 tools so that the communication between companies and their
16 shareholders isn't a once-a-year thing, it's an ongoing
17 thing. And that's why we've taken Electronic Solicitation,
18 which is a mouthful, to describe that bridge, and we're sort
19 of call it "Setu," which is the Sanskrit word for "bridge."
20 So we want to make that an ongoing --

21 MR. CAMPOS: Let me interject. If this were a
22 contested situation, okay?

23 MS. FAULK: Mm-hmm.

24 MR. CAMPOS: I've got tensions up and shareholder
25 groups are vying with the issuer and potentially against each

1 other, describe how that system would work and how
2 shareholder groups would be getting their positions to each
3 other and the company, you know, in other words, everyone
4 trading --

5 MS. FAULK: Well, the way it works --

6 MR. CAMPOS: -- positions.

7 MS. FAULK: -- with us is we have the positions, so
8 we work with the brokerage firms or the proxy advisory
9 platforms so that we know who has access, who is allowed to
10 see that message. And we don't want to be the gatekeeper for
11 communication. So, particularly when it comes to a contested
12 circumstance, we're going to let the SEC decide who is an
13 authorized party to do that. We're simply the technology and
14 the conduit for that communication. So if somebody comes to
15 us and says, I filed with the SEC, I'm running my own slate.
16 I want to send a message to the shareholders, we're happy to
17 take it.

18 Same thing for companies, so that it's really going
19 to be, once somebody has filed with the SEC, and they have
20 the transcript, we are simply the mechanism that gets them in
21 front of all the shareholders. And then authorizes to make
22 sure that it's really a private network and that nobody sees
23 that who is not a shareholder as of record date.

24 MR. WHITE: I think looking at the hour and lunch
25 being on the other side of this panel that it's probably time

1 for us to wrap up. So, Anne, we'll start with you to make
2 your closing comment. Just about a minute, please, for each
3 person.

4 MS. FAULK: Okay. First I want to say how much we
5 appreciate being able to come and talk about what we're
6 trying to do to facilitate communication between companies
7 and shareholders. And I want to say to the Commission, we've
8 been thrilled to watch what you guys have done about using
9 technology to solve the problems of this industry and to
10 facilitate really for the very first time the ability for
11 companies and shareholders to collaborate for better
12 companies.

13 MR. WHITE: Tom?

14 MR. LEHNER: Thank you. I also want to thank you
15 all for including myself and the Business Roundtable today
16 and just leave you with this point. On May 7th, and then
17 today and then again tomorrow, you'll hear on a number of
18 topics. And one of the points we want to leave you with is
19 as we've been saying, not just with respect to our petition,
20 but on proxy access and other issues, these issues are in
21 fact all interrelated.

22 And it's important that we get the mechanics done
23 right before we start discussing fundamental changes to the
24 successful model that has benefitted our economy and our
25 shareholders so well. And I think you all have done that by

1 including a broad range of different panel discussions and
2 certainly panelists, and we would hope that as you go forward
3 that you don't try and solve these problem individually
4 without realizing the impact that they have on the other
5 issues that are on the table as well.

6 Thank you.

7 MR. MOYNIHAN: Again, I thank the Commission for
8 having us today. I agree that technology is probably a large
9 part of the answer and a lot more can be done. The broker
10 representatives on the Proxy Working Group insisted that
11 there be a second phase of the Proxy Working Group
12 discussions, and we had three subcommittees, one of which was
13 Communication and the Proxy Process. Another one is Investor
14 Education.

15 And as our deliberations wore on, it began to sink
16 in to a lot of people that investor education and
17 communication is expensive, and can you really move the dial
18 from 30 percent to 35 percent or more? So I'm a realist in
19 that regard. I know how passive retail investors are, and I
20 also know there's a certain percentage of retail investors
21 that say I don't want to get the stuff at all. I want to opt
22 out from having it sent to me.

23 The real answer is real electronic delivery, as I
24 mentioned. We've developed an investor mailbox. Access
25 equals delivery is going to denigrate the retail vote, and I

1 think efforts to develop real electronic delivery where the
2 proxy material is being put in a convenient way to the
3 investor, along with services like Anne's, which are quite
4 impressive as far as making issuers be able to communicate.

5 I will say, too, though, the issuers have not
6 engaged with the brokers, and more can be done to engage and
7 look for constructive solutions.

8 MS. O'TOOLE: Thank you for inviting to participate
9 today. I believe we have to balance the issuer's need for
10 the information regarding beneficial owners and the extent to
11 which they could use it, on the one hand, with the very real
12 benefits of the current system on the other. The system is
13 viewed as impartial, accurate and reliable. It also
14 safeguards the important privacy interests of the investors
15 and the confidential client lists of the brokers.

16 I'd urge the Commission that before taking steps to
17 re-engineer such a system based on general assertions that
18 it's cumbersome and expensive, it ascertain specifically what
19 the problems are and whether those problems can't be fixed in
20 the context of the current system to everyone's satisfaction.
21 We shouldn't overhaul a system that has taken a significant
22 amount of time, money and effort to implement before trying
23 to fix it from within.

24 There hasn't been an alternative described in any
25 sufficient detail to determine whether another approach would

1 really be better. And direct communication from issuers may
2 not be tantamount to effective communication with
3 shareholders. The brokerage community, of course, would be
4 willing to participate in any fact finding or analysis as
5 needed.

6 Thank you.

7 MR. ROSSI: Again, the Securities Transfer
8 Association, we want to thank the Commission for taking this
9 issue up. It's one that we have focused on for a long, long
10 time and it's wonderful to see it getting this amount of
11 attention.

12 Just to sum up our position, a system that allows
13 direct communication is in our view superior to one that
14 positions intermediaries between a company and its investors,
15 unless the investor specifically appoints an intermediary to
16 act on its behalf. There are good corporate governance
17 reasons for adopting a direct communications model.

18 A regulatory framework that prohibits transfer
19 agents or other major service providers from combining Street
20 name and registered mailings is in our view anti-competitive
21 and represents an outdated feature of a modern market. A
22 pro-deregulation legal framework that facilitates genuine
23 competition, market pricing and one-stop-shop servicing will,
24 in our view, deliver greater innovation, lower cost to
25 issuers, and greater efficiency.

1 Additionally, it will remove significant
2 duplication of processes and costs to issuers that currently
3 have to deal with two providers; namely, the issuer or its
4 transfer agent in Broadridge. Importantly, deregulation will
5 remove the New York Stock Exchange from setting regulated
6 prices. And our view, price setting is best left to the
7 competitive market to resolve. An issuer choice, issuer pays
8 model would produce this outcome.

9 Thank you very much.

10 MR. WHITE: That concludes our final panel for
11 today. I would like to thank the panelists, the
12 Commissioners, the public for listening. Tomorrow morning
13 we're going to be starting again bright and early at 9:00
14 a.m. with our final roundtable. We'll actually have the
15 stakeholders all here tomorrow to talk about proposals by
16 shareholders. Look forward to seeing all of you then.

17 Chairman Cox, would you like to make a concluding
18 remark?

19 CHAIRMAN COX: Thank you. This is an opportunity
20 on behalf of the Commission to thank all of our panelists who
21 have done a splendid job of educating us here this morning.
22 Thank you very much for the significant contribution in time
23 and intellectual energy that you've made to this effort.

24 I also want to thank John and Betsy as we're
25 wrapping up here. You've been excellent moderators. And all

1 the staff who have helped prepare what has been now three
2 outstanding panels and an excellent roundtable.

3 Thank you very much, again, to our panelists, and
4 thanks to each of the Commissioners. As you can see, there
5 is a great deal of attention here from the full Commission.
6 And that's because we really are engaged in a rulemaking, and
7 this really is going to happen this year. So, your
8 contribution is very timely, very important. Thank you very
9 much.

10 (Whereupon, at 12:31 p.m., the Roundtable
11 Discussions Regarding Proxy Voting Mechanics concluded.)

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

