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October 20, 2010 Via E-Mail: rule-comments@sec.gov

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

Dear Ms. Murphy and Commissioners:

Subject: File Number S7-14-10; Concept Release on the U.S. Proxy System

I am writing on behalf of the California Public Employees' Retirement System (CalPERS), the largest public pension fund in the United States with approximately $218 billion in global assets and equity holdings in over 3,800 U.S. companies. CalPERS provides retirement benefits to more than 1.6 million public workers, retirees, their families and beneficiaries. As a significant long-term shareowner in the U.S. public equity markets, CalPERS has a vested interest in a proxy system that operates pursuant to the highest standards of accountability, accuracy, integrity, and transparency.

Thank you for the opportunity to provide our comments on the U.S. proxy system. We are in strong agreement with the SEC that the U.S. proxy system is a fundamental infrastructure of shareowner suffrage since the corporate proxy is the principal means by which shareowners exercise their voting rights. In general, CalPERS applauds the SEC for its efforts and ongoing consideration of updating its rules to promote greater efficiency and transparency, especially as the global equity markets and corporate governance practices continue to evolve.

The following comments specifically address a number of the issues put forth through the Concept Release.

Vote Confirmation

Concerns regarding the inability to confirm whether an investor's shares have been voted in accordance with the investor's instructions jeopardize the integrity of the U.S. proxy system. CalPERS shares the Organisation for Economic Co-operation and Development (OECD) perspective that the lack of any current legal or regulatory requirements that compel individual participants in the voting process – issuers, transfer agents, vote tabulators, securities intermediaries, or proxy service providers to

share information with each other in order to allow for vote confirmations could potentially impair confidence in the proxy system.

CalPERS specifically:

- Agrees with the need for regulatory rules that support a reconciliation be performed, or the use of a particular reconciliation or allocation method to address vote imbalances – it would be helpful to investors if broker-dealers publicly disclosed the allocation and reconciliation method on whether the customers' voting instructions would actually be reflected in the broker-dealer's proxy sent to the vote tabulator.
- Believes investors, issuers, and the proxy system overall would benefit from having additional data disclosure from proxy participants regarding over-voting and under-voting to determine whether further regulatory action should be considered given the lack of empirical data on whether over-voting or under-voting is occurring and if so, to what extent.
- Supports issuer access to shareowner voting records for the limited purpose of enabling confirmation of a shareowner's vote. However, a system that preserves any continuing anonymity of those investors who choose not to have their identities disclosed to the issuer, such as the creation of a unique identifier for each beneficial owner proposed in the SEC Concept Release, is recommended.
- Supports issuer confirmation to registered owners, beneficial owners, or securities intermediaries that the issuer has received and properly tabulated their votes.
- Believes shareowner votes should be tabulated in a manner that protects the integrity of the voting process and removes either actual or perceived conflicts of interest. Proxy votes should be tabulated in a confidential and protected manner with involvement by an independent third party intermediary that ensures the continued integrity of the entire voting system.

  The position of shareowner confidentiality is also recommended by the Council of Institutional Investors (CII) – All proxy votes should be confidential, with ballots counted by independent tabulators. Confidentiality should be automatic and permanent and apply to all ballot items. Rules and practices concerning the casting, counting and verifying of shareowner votes should be clearly disclosed.

Disclosure of Voting by Funds

Publicly disclosing a clear policy on voting and voting activity is a fundamental responsibility that should be adopted by all institutional investors, not just mutual funds. Disclosure should be required by mutual funds, through Form N-PX, of the actual number of shares voted in addition to requiring disclosure of the number of portfolio securities for which a fund did not vote proxies because the securities were on loan or for other reasons.

Proxy Voting by Institutional Securities Lenders

CalPERS believes it would be useful for investors to receive meeting agendas in advance of the record date. This would provide shareowners additional time to make informed decisions on critical voting items, determine if any shares were out on loan, and if out on loan allow time to recall votable shares. Advance notification is also supported in principle by the Council of Institutional Investors (CII)[1] and the International Corporate Governance Network (ICGN)[2].

The CalPERS Corporate Governance and Securities Lending Units implemented a process that successfully balances the potentially competing goals of securities lending and proxy voting. The process allows the fiduciary responsibility to vote proxies and the fiduciary duty to optimize investment returns. Corporate Governance prepares Restricted (internally restricted securities unavailable for lending) and Proxy Recall (composed of the top companies by market capitalization recalled prior to record date to ensure proxy vote is captured) Lists. CalPERS Securities Lending Unit distributes all lists to potential borrowers prior to auction as well.

CalPERS follows best practices with regard to its securities lending program and proxy voting responsibilities emphasizing:

- **Communication:** Between corporate governance and securities lending departments, as well as between securities lending and borrowers.
- **Transparency:** All corporate governance related information posted on auction websites for borrowers to see.
- **Consistency:** Policies and procedures are in place with regard to the securities lending program and collaboration with the proxy voting program.
- **Responsibility:** All parties involved understand the process and their respective roles.
- **Compliance:** Borrowing shares for the purpose of acquiring votes is inappropriate with legal language signed by the borrower and activity monitored.

While the CalPERS experience to date has been largely successful, more advanced notice of meeting agendas would only help further the efficiency of the existing process.

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[1] Counsel of Institutional Investors Policy: http://cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2009-29-10%20FINAL.pdf. Section 4.3, pg. 9

[2] ICGN Securities Lending Code of Best Practice: http://www.icgn.org/files/icgn_main/pdfs/best_practice/sec_lending/2007_securities_lending_code_of_best_practice.pdf. See pg. 8

Issuer Communication with Shareowners

In general, CalPERS agrees that to the extent delivery of proxy material is delayed, the utility of issuer-investor communication through the proxy process is impaired. Investors who are entitled to vote need adequate time to receive the proxy materials and consider the matters presented to them for approval. Proxy material should be written and distributed in a manner designed to provide shareowners with the information necessary to make informed decisions while encouraging shareowner participation. Annual and special meeting procedures, including requirement for documenting ownership, should be set out in the proxy to avoid confusion.

CalPERS believes there can be more efficient and cost-effective ways for issuers to communicate directly with all of their shareowners while preserving the objecting beneficial owners right to confidentiality. It is recommended that the SEC work with all parties in the proxy voting system to explore more efficient and cost-effective ways for issuers to communicate directly with shareowners including the "all beneficial owners system" described by The Altman Group in *Practical Solutions to Improve the Proxy Voting System (Oct. 2009).*

Enhancing the efficiency of shareowner communications should include a review of technological developments as well as opportunities to reduce costs born by both issuers and shareowners. While and effective shareowner communication process that takes into consideration the privacy issues related to objecting and non-objecting owners will require thorough examination, the added cost of remaining an objecting beneficial owner should not be prohibitive.

Means to Facilitate Retail Investor Participation

CalPERS strongly agrees with the SEC Concept Release that given the importance of proxy voting, a significant lack of participation by retail investors in proxy voting is a concern, even in companies in which retail share ownership represents a relatively small portion of total voting power. Every effort should be made to alleviate the difficulties experienced by retail investors in the voting process.

CalPERS specifically supports:

- SEC development of a significant investor education campaign taking into consideration collaborative educational forums targeting retail investors such as Shareowners.Org.
- Further SEC study, and potential adoption, of rules to facilitate advance voting instructions, or "client-directed voting" as a means to increase investor participation in the voting process.

- Enabling retail investors to instruct their securities intermediaries or other parties to vote their shares in any number of ways, including but not limited to those ways expressed in the SEC Concept Release.
- Requiring brokers to disclose the effect of share lending programs on the ability of retail investors to cast votes.
- The recommendations communicated by the September 23, 2010 *Report of the New York Stock Exchange – Commission on Corporate Governance*: The SEC should work with the NYSE and other exchanges to ease the burden of proxy voting and communication while encouraging greater participation by individual investors in the proxy voting process. In addition, in light of the declining participation of individual investors in recent years, the SEC should consider whether there are more effective and efficient ways for individual investors to participate in the system, as well as providing such investors with pertinent information to help ensure they make informed decisions.

Data Tagging Proxy Related Materials

CalPERS believes in transparent markets, whereby information is easily available to the investing public. The SEC should permit issuers to utilize a data tagging system, such as eXtensible business reporting language (XBRL), to provide proxy statement and voting information in an interactive data format.

The SEC should continue encouraging the standardized tagging of information and work with XBRL US to determine the most efficient method to tag proxy materials. Interactive data could provide more transparency, comparability and increase the speed, accuracy and usability of disclosures. The standard list of tags should provide more reliable data and self-validating mechanisms built into the XBRL language through its taxonomies (data dictionaries that define different industries' mandatory and commonly used reporting concepts). Additionally, XBRL tagged data provides a substantial benefit of maintaining its calculations and providing direct reference through links to authoritative references and source documents.

We believe that the SEC should continue to improve the interactive data software reader that it currently has on its website for investors, specifically with retail investors in mind.

Proxy Advisory Firms

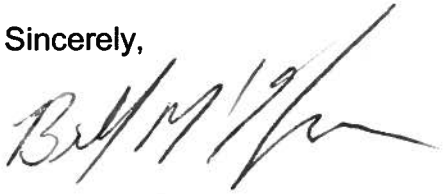
CalPERS recognizes the presence and potential influence proxy advisory services may have in the market. It should be noted CalPERS uses advisory services only as a tool for research while our proxy voting decisions are based solely on the CalPERS Global Principles of Accountable Corporate Governance. That being said, we are supportive of efforts to ensure advisory firms are transparent and accountable. CalPERS specifically supports:

- Full and complete disclosure of all conflicts of interest on the part of proxy advisory firms, especially as such conflicts relate to consulting services in conjunction with providing proxy vote recommendations.
- Disclosure of policies and procedures for interacting with both issuers and shareowners, informing issuers and shareowners of recommendations, and handling appeals of proxy advisory firm vote recommendations.

We would like to highlight and support the *New York Stock Exchange Commission on Corporate Governance Report* position as potential next steps. The Commission believes the SEC should engage in a study of the role of proxy advisory firms to determine their potential impact on, among other things, corporate governance and behavior and consider whether or not further regulation of these firms is appropriate. At a minimum, such firms should be required to disclose the policies and methodologies that the firms use to formulate specific voting recommendations. Disclosure should also include all conflicts of interest, and firms should hold themselves to a high degree of care, accuracy and fairness in dealing with both shareowners and companies by adhering to strict codes of conduct. The advisory firms should also be required to disclose the company's response to its analysis and conclusions.

To close, we thank the SEC for its leadership in protecting investor rights and for this opportunity to submit our comments on the U.S. proxy system. While we understand the Concept Release is to be directed specifically at the U.S proxy system, CalPERS would recommend that the SEC also consider international coordination to enable a U.S. proxy system that captures the increasing globalization of equity capital markets. If you would like to discuss any of these points, please do not hesitate to contact me at (916) 795-2431 or my colleague Todd Mattley at (916) 795-0565.

Sincerely,



BILL MCGREW
Portfolio Manager
Global Equity Corporate Governance

cc: Joseph A. Dear, Chief Investment Officer – CalPERS
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