

March 13, 2009

The Honorable Mary L. Shapiro
Chair
U.S. Securities and Exchange Commission
100 F Street, NE Washington DC 20549-1090

RE: File No. SR-NYSE-2006-92
Proposed Rule Change to Eliminate Broker Discretionary Voting for the
Election of Directors

Dear Ms. Shapiro:

We welcome the opportunity to comment on the proposed rule change to amend NYSE Rule 452 and Listed Company Manual Section 402.08 to categorize director elections as non-routine proposal items and thus eliminate broker votes from uncontested director elections. We commend the work of the Proxy Voting Working Group in carefully examining the use of broker votes and coming up with its recommendation that the NYSE no longer consider director elections to be a routine voting item.

Glass Lewis is an independent proxy research advisor which provides proxy voting research, analysis and recommendations to institutional investors from around the world. Glass Lewis is submitting this comment as an interested industry advisor, not on behalf of any or all of its clients.

We believe the proposed change promotes director accountability and will help bolster flagging investor confidence in public companies. We also believe that, consistent with the goals of the Exchange Act, the change will remove the perceived voting manipulation caused by the use of broker votes, ultimately protecting investors. Further we believe that the membership on the Working Group of “different constituencies” is indicative of the broad support for excluding broker votes for uncontested director elections.

Importance of Director Elections

We believe the election of directors is the most important proposal on which shareholders vote. Through the vote, shareholders can hold directors accountable when they fail to adequately represent shareholder interests in overseeing management and ultimately working to increase shareholder returns. Broker votes limit and, in some rare cases, thwart the will of shareholders when directors who are rejected by a majority of shareholders are nonetheless elected through the tabulation of broker votes since they are generally cast in line with management’s recommendation including in favor of directors.

See, for example, the vote at the annual meeting of Washington Mutual in 2008 when two director nominees, James Stever and Charles Lillis, were likely elected due to the inclusion of broker votes in their election totals despite having failed to garner majority shareholder support.¹

In those rare cases where a majority of shareholders vote against a director's election, the will of shareholders should not be gainsaid by counting uninformed broker votes. In today's economic crisis, shareholders rightly look to the board to provide robust oversight of management especially relating to risk exposure. Allowing directors to be elected or to retain their seats without majority vote of shareholders decreases investors' confidence in the board and management, and may ultimately influence their decision whether to buy or sell shares in the company.

Outdated Quorum Concerns

We believe the practice of allowing brokers to submit votes on uninstructed client ballots has outlived its original purpose of aiding issuers achieve quorum for their shareholder meetings. There has been a gradual but significant move away from companies having a majority of shares owned by a dispersed base of retail clients to the current concentrated ownership structure. At most companies today, institutional investors, like mutual funds and state and employee pension plans, own a supermajority of the outstanding shares.² These institutional investors not only allow companies to focus solicitation on a narrow group of large shareholders that own a majority of a company's shares, these investors have a fiduciary obligation to vote shares held in their investment portfolios. Thus, the participation of institutional investors at shareholder meetings in sufficient numbers to achieve quorum is assured for all except a relatively limited number of small companies.

While we recognize that some smaller companies with a dispersed shareholder base may still face challenges achieving quorum without relying on broker votes for director elections, we believe companies can resolve this by providing shareholders a vote on another routine voting item such as ratification of auditors. In fact, the lack of regular submission of these other routine proposals was cited by the Working Group for exempting investment companies from the rule change.

¹ Assuming all broker votes were cast in favor. Vote totals including broker non-votes were as reported in Washington Mutual's 10Q filed August 11, 2008.

² According to the 2008 *Institutional Investment Report* of The Conference Board, institutional investors owned 76.4 percent of the 1,000 largest U.S. corporations at year-end 2007.



We would be happy to provide any additional information to the SEC regarding this matter. Thank you for the opportunity to comment on the proposed rule change regarding broker votes.

Sincerely,

/s/

Robert McCormick, Chief Policy Officer

cc: Kathleen L. Casey, Commissioner, Securities and Exchange Commission
Elisse B. Walter, Commissioner, Securities and Exchange Commission
Luis A. Aguilar, Commissioner, Securities and Exchange Commission
Troy A. Paredes, Commissioner, Securities and Exchange Commission