



Business Roundtable™

1717 Rhode Island Avenue, NW  
Suite 800  
Washington, DC 20036

Telephone 202.872.1260  
Facsimile 202.466.3509  
Website [businessroundtable.org](http://businessroundtable.org)

March 25, 2009

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
150 F Street, NE  
Washington, DC 20549-1090

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The McGraw-Hill Companies  
Chairman

Kenneth I. Chenault  
American Express Company  
Vice Chairman

G. Richard Wagoner, Jr.  
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Larry D. Burton  
Executive Director

Johanna I. Schneider  
Executive Director  
External Relations

**Re: Proposed Amendment to New York Stock Exchange Rule 452 -  
File Number SR-NYSE-2006-92**

Dear Ms. Murphy:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies with \$4.5 trillion in annual revenues and nearly ten million employees. Member companies comprise nearly a third of the total value of the U.S. stock market and represent over 40 percent of all corporate income taxes paid to the federal government. Business Roundtable companies give more than \$7 billion a year in combined charitable contributions, representing nearly 60 percent of total corporate giving. They are technology innovation leaders, with \$90 billion in annual research and development spending—nearly half of the total private R&D spending in the United States.

While we appreciate some of the concerns that have been expressed with respect to broker discretionary voting, it is important to emphasize that it is only one of a number of issues that have been raised concerning the antiquated and overly complex proxy voting and stockholder communications system that exists in the United States today. Accordingly, we do not believe that the Securities and Exchange Commission (“SEC”) should approve the proposed changes to New York Stock Exchange (“NYSE”) Rule 452 to eliminate broker discretionary voting in uncontested director elections at the present time. Any such consideration must take place in the context of a thorough review of the current proxy voting and stockholder communications system as a whole. Business Roundtable, along with others, has been urging such a review ever since it filed a rulemaking petition with the SEC on this subject in April 2004. Moreover, we are concerned that the

proposed amendment to Rule 452 could have serious implications for stockholders and issuers that have not been adequately addressed. In this regard, we note that the proposed amendment is based on one of the recommendations of the NYSE Proxy Working Group, but does not address the other recommendations of the Working Group. The remainder of this letter outlines our concerns about the proposed amendment and summarizes our views as to why a thorough review of the proxy voting and stockholder communication system is necessary.

### **Stockholder Education**

Business Roundtable believes that eliminating broker discretionary voting in uncontested director elections runs the risk of disenfranchising many stockholders who hold their securities in street or nominee name as it may be counter to their assumptions about broker voting. In this regard, research conducted on behalf of the Proxy Working Group and appended to the NYSE rule filing indicates that approximately 37 percent of stockholders appear to be aware that if they do not vote their proxy on “routine” matters, their shares may be voted by their brokers in their discretion, and 27 percent of stockholders appear to be aware that when brokers exercise their discretion in voting on such matters, they typically vote in accordance with the recommendations of the issuer’s board of directors. Thus, amending Rule 452 without a corresponding widespread effort to educate investors about the practical implications of the amendment could significantly impact stockholders’ exercise of their rights, as many stockholders likely will continue believing that even if they do not provide voting instructions, their brokers will vote on their behalf. Indeed, the Proxy Working Group recommended that if Rule 452 were amended to make uncontested director elections a “non-routine” matter, a “critical component” of such amendment would be that the NYSE work with the SEC and issuers to develop a “significant investor education effort” to inform investors about the proxy process and the importance of voting. We note that the NYSE rule filing is silent on this point.

### **Stockholder Communications**

The Proxy Working Group report also states that the proposed amendment to Rule 452 could significantly increase the cost to issuers of uncontested director elections, as issuers will need to spend more time and money reaching out to stockholders who previously did not vote. In this regard, the current stockholder communication rules, which preclude direct communication between issuers and many of their stockholders, present a significant obstacle to efficient communication. As noted above, we have been requesting that the SEC re-examine the current proxy voting and stockholder communications system for quite some time. These issues also were the subject of an SEC Roundtable in May 2007, but no further action has been taken until the recent abrupt publication of the proposed amendment to Rule 452. At the SEC Roundtable, Thomas Lehner, Business Roundtable’s Director of Public Policy, echoing the views of other panelists, stated: “I think there’s been a lot of agreement. . . . [T]he [stockholder communications] system is . . . outdated. It’s cumbersome. It’s indirect.” Consequently, consistent with the April 2004 rulemaking petition and with the recommendations of the Proxy

Working Group, Business Roundtable believes that any amendment to Rule 452 should not be considered in isolation, but instead should be considered in conjunction with a broader review by the SEC of its proxy voting and stockholder communications rules.

### **Corporate Governance Changes**

Business Roundtable has long been a strong supporter of good corporate governance. We share the SEC's belief that corporate boards and management must be accountable to stockholders and hold themselves to high standards of corporate governance. In this regard, sweeping changes in the corporate governance landscape have occurred in recent years. For example, according to a recent Business Roundtable membership survey, approximately 88 percent of Business Roundtable companies have boards that are at least 80 percent independent. At 75 percent of Business Roundtable companies, the board meets in executive session at every meeting. Changes in the governance landscape also have transformed the director election process and will continue to do so. For example, there has been a growing trend in recent years towards issuers adopting a majority voting standard in uncontested director elections. Approximately 56 percent of S&P 500 companies have adopted majority voting requirements, and, among Business Roundtable companies, the proportion of companies is even higher, at approximately 75 percent.

We believe that the interaction of the amendment to Rule 452 with these corporate governance changes, particularly with the growing adoption of a majority vote standard in uncontested director elections, is likely to raise substantial questions. Therefore, before adopting the proposed amendment to Rule 452, it is crucial to understand what impact the proposed amendment would have on future director elections, particularly at issuers that have adopted majority voting.

### **Voting Recommendations of Proxy Advisory Firms**

The loss of the broker discretionary vote in uncontested director elections could further increase the influence of the recommendations of proxy advisory firms on the outcome of director elections. This is especially relevant today given that proxy advisory firms are issuing more withhold or against vote recommendations for issuers' director nominees based upon single issues, such as whether a company pays dividends or dividend equivalents on unvested performance shares. In this regard, we note that the Proxy Working Group report encouraged the SEC to study the increasing role and influence of proxy advisory firms. Other groups also have expressed concern about the role of proxy advisory firms in the proxy voting process. For example, a recent report by the Millstein Center for Corporate Governance and Performance at the Yale School of Management entitled "Voting Integrity: Practices for Investors and the Global Proxy Advisory Industry" emphasized the need to address concerns, such as conflicts of interest, with respect to the voting recommendations of proxy advisory firms. We therefore believe that the SEC should analyze the role these firms play in the proxy voting process in connection with its consideration of the proposed amendment to Rule 452.

### **Quorum Issues**

As recognized by the Proxy Working Group, the loss of the broker discretionary vote in uncontested director elections could result in quorum problems at companies that do not have at least one routine item on their ballot. Broker voting traditionally has played an important role in allowing issuers to achieve quorum for stockholder meetings, and, indeed, was the genesis for Rule 452. In this regard, the Proxy Working Group report cites ADP (now Broadridge) estimates indicating that it would have been materially more difficult and costly for issuers to meet their quorum requirements without the use of broker discretionary voting. Accordingly, while many public companies include at least one “routine” item at their annual meetings, generally the ratification of auditors, we are concerned that the loss of the broker discretionary vote in uncontested director elections could result in quorum problems, especially at smaller companies that may not have at least one routine item on their ballot.

### **Alternatives**

The August 2007 Addendum to the Proxy Working Group’s report identified two alternatives to the proposed amendment to Rule 452—proportional voting and Client Directed Voting—and indicated that they warranted further study. In recent years, a number of brokers have implemented proportional voting on “routine” matters, whereby brokers, on a firm-by-firm basis, vote uninstructed shares in the same proportion as those shares for which they received voting instructions from their other retail stockholders. The Addendum stated that the Working Group planned to review the experiences of brokers who have implemented proportional voting to determine whether it is a viable alternative. The Addendum also discussed a proposal developed by Working Group member Stephen Norman called Client Directed Voting and stated that it would continue to evaluate this alternative as well. Under Client Directed Voting, investors would be permitted (but not required) to provide a “good until cancelled” instruction on matters to be voted on at companies in which they own stock. The Working Group report noted that Client Directed Voting is somewhat analogous to the system in place for some institutional investors who delegate proxy voting to third parties. Business Roundtable agrees with the Proxy Working Group that these alternatives to totally eliminating broker discretionary voting in uncontested director elections warrant further study. Such study needs to occur in connection with consideration of the proposed amendment to Rule 452, because once broker discretionary voting in uncontested director elections is eliminated, proportional voting on such matters will no longer be permissible.

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In summary, we believe that the SEC should not consider the proposed amendment to Rule 452 to eliminate broker discretionary voting in uncontested director elections in isolation. As we and others have been urging for almost five years, the significant issues presented by our antiquated and overly complex proxy voting and stockholder communications system must be addressed. For the reasons set forth above, this is necessary before action is taken to amend

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Rule 452 to eliminate broker discretionary voting in uncontested director elections. As a first step, we request that the SEC extend the rulemaking period to give interested parties additional time to consider and comment on the important issues raised by the proposed amendment. The SEC should then consider how best to address the broader issues, whether through the formation of an advisory committee or otherwise.

We appreciate the opportunity to present our views on this subject. Please do not hesitate to contact Larry Burton at Business Roundtable at (202) 872-1260 if we can provide further information.

Sincerely,



Anne M. Mulcahy

Chairman and Chief Executive Officer, Xerox Corporation  
Chair, Corporate Leadership Initiative, Business Roundtable

cc: Hon. Mary L. Schapiro, Chairman  
Hon. Kathleen L. Casey, Commissioner  
Hon. Elisse B. Walter, Commissioner  
Hon. Luis A. Aguilar, Commissioner  
Hon. Troy A. Paredes, Commissioner