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October 20, 2010

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: Concept Release on the U.S. Proxy System; File No. S7-14-10

Dear Ms. Murphy:

The Independent Directors Council<sup>1</sup> appreciates the opportunity to comment on the Commission's recent concept release on the U.S. proxy system.<sup>2</sup> IDC commends the Commission for undertaking this comprehensive review to address concerns about the accuracy, transparency, and efficiency of the proxy voting system. Investment companies – as both shareholders of the companies in which they invest and issuers with their own boards and shareholders – are important participants in the proxy system. Fund directors take great interest in improving the proxy voting system from both perspectives and exploring ways to address concerns identified in the Release. IDC's comments focus on three specific areas of interest to fund directors: (i) communications between a fund and its shareholders; (ii) shareholder participation in proxy voting; and (iii) decisions to recall loaned securities.

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<sup>1</sup> IDC serves the fund independent director community by advancing the education, interaction, communication, and policy positions of fund independent directors. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$11.51 trillion and serve over 90 million shareholders, and there are approximately 2,000 independent directors of ICI member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

<sup>2</sup> SEC Release Nos. 34-62495; IA-3052; IC-29340 (July 14, 2010), 75 Fed. Reg. 42982 (July 22, 2010) (the "Release"). The Release can be found on the SEC's website at <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

As a preliminary matter, IDC urges the Commission, in any regulatory action it may take as a result of its review of the proxy system, to keep in mind the fundamental nature of a board's oversight role. Fund directors are subject to general fiduciary duties and oversee the management and operations of the fund on behalf of the fund's shareholders. They are not involved in the day-to-day management of a fund's business. When it comes to oversight of proxy voting, the Commission has appropriately recognized that a fund board typically delegates the proxy voting function to the fund's investment adviser as part of the adviser's general management of fund assets, subject to the board's continuing oversight.<sup>3</sup> IDC offers its comments on the Commission's Release from this oversight perspective.

#### A. Communications Between a Fund and its Shareholders

In its Release, the Commission acknowledges the problems associated with the practice of intermediaries holding securities in street name on behalf of a beneficial owner, and related concerns about (a) the ability of issuers to communicate directly with their shareholders, and (b) the cost to issuers to communicate with shareholders. IDC shares these concerns and recommends that the Commission take steps to better enable funds to communicate with their shareholders in a cost-effective manner.

The ability of a fund to communicate with its shareholders is impeded, in large part, by the current classification of shareholders into one of two categories: those who object to having their contact information shared by the intermediary holding their account (*e.g.*, a broker-dealer) with the issuer ("objecting beneficial owners" or OBOs); and those who do not object ("non-objecting beneficial owners" or NOBOs). As discussed in the Release as well as in information submitted to the Commission on this issue, there is some concern that intermediaries encourage investors to elect OBO status, thereby limiting issuers' ability to know the identity of their shareholders and preventing any direct interaction with them. It also necessitates that funds and other issuers expend considerable time, energy, and money trying to communicate with their shareholders through intermediaries that may not have the same economic interest as the shareholders to vote their shares and therefore may not be incentivized to ensure that shareholders votes their shares. IDC supports eliminating the OBO/NOBO distinction and replacing it with a system that provides issuers direct access to their shareholders' contact information so that funds may directly interact with their shareholders on proxy voting issues.<sup>4</sup>

The costs to issuers of communicating with their shareholders is exacerbated by the fact that the intermediary selects the proxy service used to distribute an issuer's materials, while the issuer,

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<sup>3</sup> See SEC Release Nos. 33-8188, 34-47304, IC-25922 (January 31, 2003) (available on the SEC's website at [www.sec.gov/rules/final/33-8188.htm](http://www.sec.gov/rules/final/33-8188.htm)) (adopting requirements relating to the disclosure of proxy voting policies and proxy voting records by registered management investment companies).

<sup>4</sup> Investors who choose to remain anonymous should be permitted to do so.

without the benefit of any input into the selection of or negotiations with the proxy service, has to pay the fees associated with the service, which are oftentimes excessive. This system fails to create an incentive for intermediaries or proxy service firms to reduce their fees or provide cost-efficient services. Moreover, while the fees paid by issuers for this service are absorbed by operating companies, with respect to mutual funds, these fees are passed on to fund shareholders as a fund expense. The more expensive the process is for a fund, the more the fund's shareholders suffer by reduced returns on their investment. IDC therefore strongly recommends that the Commission revisit the current proxy system with a view toward providing funds greater access to their shareholders and a greater say in how their proxy materials are distributed and by whom.

#### B. Shareholder Participation in the Proxy Voting Process

In its Release, the Commission expresses concern over the historically low retail investor participation rates in the proxy voting process. Low retail investor participation rates are of particular concern to funds due to the high percentage of retail ownership and the enormous cost to them, and ultimately their shareholders, of obtaining quorums. The Release seeks comment on potential regulatory responses, including the concept of client-directed voting. IDC supports client-directed voting, which would enable retail investors, at the time they open a brokerage account,<sup>5</sup> to communicate advance voting instructions (e.g., vote in accordance with/against management's recommendations). Shareholders would still receive proxy materials and could revoke the instructions at any time. The ability of a fund to obtain advance voting instructions would serve the best interests of shareholders by facilitating, and therefore increasing, retail participation in the voting process and decreasing the cost of obtaining shareholder votes. IDC therefore strongly encourages the Commission to pursue this option.

Another way to facilitate shareholder participation in the proxy voting process would be to allow issuers using the "notice and access" model to include a proxy card in the same mailing with the notice alerting shareholders that proxy materials are available electronically. Currently, proxy cards must be sent separately from, and at least 10 days after, the mailing of the notice. As the Investment Company Institute has pointed out, separating the proxy card from the notice may cause confusion among shareholders who are inclined to vote, as evidenced by reports of shareholders attempting to vote by returning a marked copy of a notice.<sup>6</sup> Those shareholders likely expected a proxy card in the mailing, and were confused when they were unable to find one. For any shareholders who were prepared to cast their votes at the time of, or shortly after, receiving the notice (at which time they had access to the proxy materials if they wished to read them), the mandated delay is an inconvenience and

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<sup>5</sup> IDC recommends that the Commission allow an investor to provide these instructions at the time he or she opens an account with *any* financial intermediary or directly with the fund.

<sup>6</sup> See Letter from Robert C. Grohowski, Senior Counsel, Investment Company Institute, to Ms. Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated November 20, 2009.

likely results in significantly fewer votes being cast. As a result, the Commission should permit inclusion of a proxy card with the notice to help increase shareholder voting rates.

Fund directors take great interest in seeking to increase shareholder participation rates. Accordingly, IDC supports allowing client-directed voting, permitting inclusion of a proxy card with notice in the notice and access model, and eliminating the OBO/NOBO distinction. Pursuing each of these reforms will both help to increase shareholder participation in the proxy voting process and reduce the costs associated with proxies.

### C. Decisions to Recall Loaned Securities

The Release also requests comments on the impact of securities lending on the proxy voting process. Securities lending programs are subject to conditions set forth in no-action letters issued by the Commission staff dating back to 1972.<sup>7</sup> One of these conditions is that the board must terminate a loan and recall the security to vote its proxy if fund management has knowledge that a material event will occur affecting the security on loan. As the Release recognizes, though, securities lenders often do not have notice of material votes until it is too late to terminate the loan or recall the securities. Even if a fund has knowledge of a material matter to be voted on, recalling the security may not be in the best interest of the fund or its shareholders (e.g., loss of income). Directors, with the outdated mandate to recall some securities and the overarching role of looking after the best interest of fund shareholders, may be caught in the crosshairs of two sometimes competing responsibilities.<sup>8</sup>

The Commission is long overdue to recognize a fund board's ability to delegate to the fund's manager the decision to recall loaned securities, subject to policies and procedures approved by the board and the board's continued oversight. As a practical matter, it is the fund's manager who can best determine the potential impact of the vote on the value of the holding. Indeed, many fund advisers employ a cost-benefit analysis to determine whether the cost of voting a proxy for a security on loan exceeds the expected benefit to the fund of voting the proxy.<sup>9</sup> Charging a board with making the determination of whether to recall a loaned security fails to recognize the oversight role of the board and inappropriately involves the board in the day-today management of the fund. IDC urges the

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<sup>7</sup> See, e.g., State Street Bank & Trust Company, SEC No-Action Letter (Sept. 29, 1972).

<sup>8</sup> See Statement of Bruce G. Leto, Esq., Stradley Ronon Stevens & Young, LLP to the U.S. Securities and Exchange Commission Securities Lending and Short Sale Roundtable (Sept. 29, 2009). Complicating this dilemma is the fact that requiring issuers to provide more timely information about upcoming votes may lead to empty voting, to the detriment of shareholders.

<sup>9</sup> See Independent Directors Council and Investment Company Institute, *Oversight of Fund Proxy Voting* (July 2008), available at [http://www.idc.org/pdf/ppr\\_08\\_proxy\\_voting.pdf](http://www.idc.org/pdf/ppr_08_proxy_voting.pdf).

Ms. Elizabeth M. Murphy

October 20, 2010

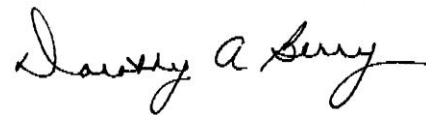
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Commission to take into account the practical reality of how a fund board operates and confirm that the board may delegate the decision whether to recall a loaned security in order to vote its proxy.

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If you have any questions about our comments, please contact Amy B.R. Lancellotta, Managing Director, IDC, at 202-326-5824.

Sincerely,

A handwritten signature in black ink that reads "Dorothy A. Berry". The signature is written in a cursive style with a long horizontal flourish at the end.

Dorothy A. Berry  
Chair, IDC Governing Council

cc: Andrew J. Donohue, Director  
Susan Nash, Associate Director  
Robert Plaze, Associate Director  
Douglas Scheidt, Associate Director and Chief Counsel

Division of Investment Management