

**AUGUST 27, 2007 ADDENDUM**

**TO THE**

**REPORT AND RECOMMENDATIONS OF THE PROXY WORKING GROUP**  
**TO THE NEW YORK STOCK EXCHANGE DATED JUNE 5, 2006**

	<u>Page</u>
I. INTRODUCTION .....	1
II. THE PROXY WORKING GROUP’S ADDITIONAL FINDINGS AND CONCLUSIONS.....	2
A. RECOMMENDATION TO EXEMPT INVESTMENT COMPANIES FROM THE WORKING GROUP’S PROPOSED AMENDMENT TO RULE 452 .....	2
B. CONTINUED ANALYSIS OF PROPORTIONAL VOTING .....	3
C. REVIEW OF CLIENT DIRECTED VOTING.....	4
D. SUMMARY OF THE VIEWS OF THE PROXY PROCESS AND SHAREHOLDER COMMUNICATIONS SUB-COMMITTEE .....	6
E. SUMMARY OF THE VIEWS OF THE INVESTOR EDUCATION SUB-COMMITTEE .....	7
F. SUMMARY OF THE VIEWS OF THE COST AND PRICING SUB-COMMITTEE AND ADDITIONAL ANALYSIS OF RULE 465 FOLLOWING THE SEC’S ADOPTION OF THE “E-PROXY” RULES .....	7
III. CONCLUSION.....	8

## I. INTRODUCTION

The Proxy Working Group was created by the New York Stock Exchange (the “NYSE”) in April 2005 to review the NYSE rules regulating the proxy voting process, and more specifically to review and make recommendations with respect to NYSE Rules 450-460 (with a particular focus on Rule 452) and 465. The Proxy Working Group submitted its recommendations relating to NYSE Rules 452 and 465 to the NYSE on June 5, 2006 in the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange (the “Report”).<sup>1</sup>

Following receipt of the Proxy Working Group’s Report, and consistent with the recommendations in the Report, the NYSE proposed an amendment to Rule 452 to eliminate broker discretionary voting on the election of directors. The proposal was filed with and is subject to approval by the U.S. Securities and Exchange Commission and calls for, among other things, the amendment of NYSE Rule 452 to be effective for all shareholder meetings held on or after January 1, 2008. The Proxy Working Group continues to recommend that Rule 452 be amended, subject to the modifications suggested in this Addendum, and urges the SEC to publish the amendment for comment and final consideration by the SEC as soon as possible.

Following the issuance of the Report, the Proxy Working Group established the following sub-committees:

1. The Communication and Proxy Process Sub-Committee;
2. The Investor Education Sub-Committee; and
3. The Cost and Pricing Sub-Committee.

In addition to monitoring the work of each of the sub-committees, the Proxy Working Group has continued to meet as a whole to evaluate comments to its report and, more broadly, to continue to analyze current issues related to proxy voting and shareholder communications. This Addendum updates the Report to include developments occurring since the original report was issued in June 2006.<sup>2</sup>

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<sup>1</sup> A copy of the Report is attached at Exhibit 1 hereto.

<sup>2</sup> The Proxy Working Group received comments from a wide variety of participants in the proxy process in response to the Report. The groups submitting written comments and materials to the Proxy Working Group included the Investment Company Institute (the “ICI”), the Business Roundtable, CalPERS, the Society of Corporate Secretaries & Governance Professionals and the International Corporate Governance Network. A complete list of all of the companies and entities who submitted comments to the Proxy Working Group in response to the Report is attached at Exhibit 2 hereto.

## II. THE PROXY WORKING GROUP'S ADDITIONAL FINDINGS AND CONCLUSIONS<sup>3</sup>

### A. RECOMMENDATION TO EXEMPT INVESTMENT COMPANIES FROM THE WORKING GROUP'S PROPOSED AMENDMENT TO RULE 452

Following the issuance of the Report, the NYSE received a number of comment letters on the various issues and recommendations in the Report, many of which were focused on the implications of making the election of directors a non-routine matter. Among the primary concerns expressed was the potential difficulty in obtaining a quorum in uncontested elections without the use of the broker discretionary vote pursuant to existing Rule 452. This issue was raised by a number of operating companies, especially representatives of small and mid-size companies.

The investment company community raised similar issues, emphasizing the cost and difficulties of obtaining a quorum as well as general problems in getting fund shareholders to vote.<sup>4</sup> In addition, the investment companies emphasized the different and unique regulatory and statutory regime governing their actions, which provides additional protections to investors. The Investment Company Institute ("ICI") provided detailed information to the Working Group, including analyses about the additional costs that would be incurred by investment companies if such companies would not be allowed to count broker-votes in uncontested elections for directors, as well as the different shareholder profiles of investment companies and operating companies, and the differing regulatory regimes of investment companies.<sup>5</sup>

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<sup>3</sup> The Proxy Working Group would also like to thank the following individuals who participated in some of the deliberations of the Working Group and/or its sub-committees which are covered in this addendum: William Adams IV, Executive Vice President, Nuveen Investments, Inc.; Roger Bolton, Senior Vice President, Aetna, Inc. (retired); Gwenn Carr, Senior Vice President & Secretary, MetLife, Inc.; Myron Kandel, Founding Financial Editor, CNN; Cary Klafter, Vice President, Legal and Corporate Affairs, Intel Corporation; Michael McAlevey, Chief Corporate & Securities Counsel, General Electric; Douglas Ober, Chairman & Chief Executive Officer, The Adams Express Company; Gloria Smith-Hill, Branch Chief, U.S. Securities & Exchange Commission; and Coleman Stipanovich, Executive Director, Florida State Board of Administration.. In addition, Richard Koppes resigned from the Proxy Working Group.

<sup>4</sup> The ICI submitted a report to the Proxy Working Group titled "Costs of Eliminating Discretionary Broker Voting on Uncontested Elections of Investment Company Directors," which found, among other things, that if "discretionary broker voting is eliminated, typical proxy costs [for investment companies] are estimated to more than double" and that therefore "fund expense ratios could rise by approximately 1 to 2 basis points owing to higher proxy costs."

<sup>5</sup> The ICI Report also emphasized that the large retail ownership of most funds create far greater logistical difficulties in reaching shareholders than for operating companies, and noted

These issues were discussed at length by and among the members of the Proxy Working Group. In particular, the Proxy Working Group considered the heightened problems that investment companies face because of their disproportionately large retail shareholder base. In addition, the Proxy Working Group reviewed the types of issues often presented to shareholders of investment companies, and noted that such companies often do not include other “routine” matters on their ballot, which would allow broker discretionary voting for quorum purposes.

The Proxy Working Group reviewed the materials submitted by the ICI and other representatives of investment companies concerning the difficulties such companies would have if they were subject to the amendment to Rule 452 making director elections “non-routine.” Additionally, the Proxy Working Group reviewed and considered the fact that investment companies are subject to regulation under the Investment Company Act of 1940 (which also regulates shareholder participation in key decisions affecting such regulated funds), while operating companies are not subject to this Act.

The Proxy Working Group also had a number of discussions about the difficulties faced by smaller issuers, and recognizes that smaller issuers may be subject to some of the same problems that investment companies are subject to, including a high percentage of shares held by retail investors, and an increased cost in obtaining a quorum as a result of the proposed changes to Rule 452. There was considerable concern and discussion about the potential problems facing smaller issuers as a result of the potential rule change, as well as discussion about the similarities and differences between smaller operating companies and investment companies.

Ultimately, the Working Group concluded that the unique regulatory regime governing investment companies made such companies sufficiently different from operating companies (regardless of size) that it was appropriate to treat such companies differently. Accordingly, the Working Group determined to amend its initial recommendation to the NYSE with respect to Rule 452 to make this recommendation apply only to operating companies, and to unanimously recommend that such changes to Rule 452 not apply to any company subject to the Investment Company Act of 1940.

#### B. CONTINUED ANALYSIS OF PROPORTIONAL VOTING

The Proxy Working Group previously reviewed proportional voting as an alternative to existing Rule 452. As detailed in the Proxy Working Group’s original report, under this approach, rather than giving brokers discretion to vote uninstructed shares, uninstructed shares would be voted in the same proportion as instructed shares. *See Report at 16-18.*

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that investment companies already have a higher degree of re-solicitations and adjournments of shareholder meetings with non-routine matters than operating companies.

At the time of its initial Report, the Proxy Working Group recognized a number of potential benefits and possible issues with a proportional voting system. For example, the Working Group noted that a proportional voting system could allow uninstructed shares to be voted on every proposal, including those proposals now considered non-routine, and in a manner which did not give any inherent advantage to either the incumbent board or the dissident. This is in contrast to the existing system, where uninstructed shares have historically been voted in favor of the board's recommendations. The Proxy Working Group also recognized that there were a number of potentially difficult logistical details involved in any type of proportional voting system. Moreover, there was a concern that with broker by broker proportional voting the results could possibly be subject to manipulation in limited circumstances.

Following the publication of the Report, the Securities Industry and Financial Markets Association ("SIFMA") (formerly known as the Securities Industry Association or "SIA") issued a "best practices" memorandum and recommendation to its members that they review the practice of automatically voting uninstructed shares under Rule 452 in favor of management and to consider voting uninstructed retail shares in proportion to the voting instructions each broker receives from its retail clients. The Proxy Working Group was advised that this change to proportional voting could be in place by some brokers during the 2007 proxy season. Pursuant to SIFMA's proportional voting recommendation, uninstructed retail shares would be voted in proportion to shares voted by other retail shareholders at the particular broker, thereby reducing the potential for manipulation.

The Proxy Working Group held a number of discussions, both among its members and with representatives of SIFMA, concerning this development. In particular, the Proxy Working Group sought to understand the logistical impact of this type of system, and its ability to reduce the risk of abuse that some members of the Working Group were concerned about at the time the Report was issued. By limiting the vote to be considered in making proportional voting decisions to the retail vote, the Proxy Working Group thought that the potential for manipulation could be significantly reduced.

At SIFMA's request, the Proxy Working Group advised SIFMA that it had no objection to the members of SIFMA moving forward with this form of proportional voting. The Proxy Working Group understands that certain brokers have instituted proportional voting this proxy season, and it plans to review the brokers' experience and consider whether proportional voting is a viable alternative.

### C. REVIEW OF CLIENT DIRECTED VOTING

Following the release of the Report, Stephen Norman, a member of the Proxy Working Group and Secretary of the American Express Company, developed a new proposal which he called "Client Direct Voting" or "CDV." Mr. Norman's CDV proposal was designed to address the fact that historically less than half of retail shareholders have voted, and in uncontested director elections that number is even smaller. In contrast, institutional investors tend to vote at the rate of 90% or more (at

least in part because such investors are generally legally required to vote in corporate elections), and they frequently employ various proxy advisory which significantly reduce many of the logistical burdens associated with the proxy voting process.

Pursuant to the CDV proposal, an investor's brokerage agreement would allow (but not require) the investor to provide a "good until cancelled" instruction on matters to be voted on at companies in which they own stock. These choices could include an instruction to: (i) vote in accordance with the board's recommendation, (ii) vote against the board's recommendation, (iii) abstain from voting and (iv) vote proportionally with the member firm's retail clients' instructed votes on the same issue. The recommended default position for clients who fail to specify a choice in their brokerage agreements would be proportional voting, so that neither the company nor any dissident would receive a disproportionate advantage if the investor made no choice.

In the contemplated CDV system, an investor's instruction would always revocable, and the CDV decision would only be operable in the absence of a specific voting instruction. In addition, under CDV, each investor would receive a notice from their brokerage firm at the time of any proxy solicitation, advising them of their standing CDV instructions and how those instructions would be implemented in connection with the upcoming vote, thereby giving the investor specific notice of how his or her shares are to be voted. Investors always would have the ability to override the CDV instructions and giving different voting instructions to the broker. CDV as contemplated would apply to all matters to be voted on in the proxy statement, eliminating the need for the routine/non-routine distinction applied under NYSE Rule 452.

There was considerable discussion among the Proxy Working Group's members about the advantages and disadvantages of the CDV proposal. For example, there was concern that CDV could act as a disincentive for individual investors to vote after reviewing proxy materials on specified matters if they feel that they have already given generic voting instructions. In particular, it was noted that the CDV proposal could make it easy for investors (particularly retail investors) to disengage from the proxy process, and essentially make important voting decisions in advance without full information about the matters to be voted upon. In contrast, others within the Working Group believed that CDV would make it easier for investors to vote and thereby making it easier for them to be engaged in the proxy voting process. Under existing Rule 452 brokers may only cast ballots on routine matters, while under the CDV proposal the routine/non-routine distinction would be eliminated. Members of the Proxy Working Group also addressed the fact that CDV would eliminate the need for Rule 452 in its entirety without causing any difficulty for issuers to achieve quorum.

There was considerable discussion about the potential benefits of the CDV proposal. For example, it was noted that this proposal could result in more discussion and involvement between investors and their brokers on proxy issues, particularly if the investor received multiple notices about how their vote would be cast. It was also noted that the system under CDV was somewhat analogous to that in place for some institutional investors who delegate proxy voting to third parties. It also could

significantly reduce the logistical burdens of proxy voting for retail investors analogous to the systems currently in place for institutional investors.

The Proxy Working Group has been advised that some brokers have begun to give consideration to the possible implementation of CDV. At this time, the Proxy Working Group continues to evaluate the advantages and disadvantages of CDV in light of its recommendation to amend Rule 452 and other initiatives underway at the SEC.

#### D. SUMMARY OF THE VIEWS OF THE PROXY PROCESS AND SHAREHOLDER COMMUNICATIONS SUB-COMMITTEE

The Proxy Process and Communications Sub-Committee was one of three sub-committees established by the Proxy Working Group following the delivery of the Report to the NYSE in June 2006. The purpose of the Communications Sub-Committee was to create a forum where representatives of a number of different participants in the proxy process could meet and discuss the current system, as well as possible alternatives or improvements to this system, within the framework of the Proxy Working Group's recommendations and on-going technological developments. The Communications Sub-Committee began its deliberations in October 2006.

Over the course of four months, the Communications Sub-Committee received presentations from 9 groups, including representatives of the Securities Industry and Financial Markets Association, Broadridge Financial Solutions (formerly known as Automatic Data Processing or "ADP"), Computershare, Depository Trust Corporation and the Securities Transfer Association. In addition, the Communications Sub-Committee received reports from various groups, and held meetings with representatives of various participants in the current proxy voting system, in an effort to obtain a greater understanding of the mechanics of the system. The Communications Sub-Committee spent a considerable amount of time analyzing the existing system, looking at its advantages and disadvantages, as well as various ways it could be improved without wholesale changes, including reviewing the CDV proposal and proportional voting initiatives by the brokers. In particular, the Communications Sub-Committee discussed the feasibility of giving both issuers and dissidents greater flexibility to choose among competing providers of shareholder communications services, while retaining the current system's protections for proprietary broker-data, shareholder privacy and integrity of the vote tabulation process. The Communications Sub-Committee presented its findings to the Proxy Working Group.

In addition to the discussions held by the Communications Sub-Committee, the Securities and Exchange Commission announced on April 24, 2007 that it would host a series of roundtable discussions in May 2007 on shareholder rights and the federal proxy rules. The roundtable discussion on May 24, 2007 covered the following topics: (1) share ownership and voting; (2) broker proxy voting under Rule 452, including the NYSE's proposed amendment to Rule 452; and (3) shareholder communications. The roundtable presented an opportunity for representatives of the various communities to discuss these issues and to hear the SEC's perspectives on these issues.

E. SUMMARY OF THE VIEWS OF THE INVESTOR EDUCATION SUB-COMMITTEE

The Education Sub-Committee, one of the other sub-committees established by the Proxy Working Group following the delivery of the Report to the NYSE in June 2006, focused its efforts on how best to educate the retail investor on the proxy voting process. In particular, the Education Sub-Committee worked with the brokerage community representatives on the committee to consider possible uniform guidelines that all brokers would use when opening brokerage accounts in order to clearly identify the differences between objecting beneficial owner status (“OBOs”) and non-objecting beneficial owner status (“NOBOs”). The work of the sub-committee also considered the possible need to ask existing beneficial owners with brokerage accounts to re-affirm their OBO/NOBO status based on the clear guidelines and information developed by the Education Sub-Committee. The Education Sub-Committee presented its findings to the Proxy Working Group and continues to be available to consider additional educational steps as appropriate.

F. SUMMARY OF THE VIEWS OF THE COST AND PRICING SUB-COMMITTEE AND ADDITIONAL ANALYSIS OF RULE 465 FOLLOWING THE SEC’S ADOPTION OF THE “E-PROXY” RULES

The Proxy Working Group, as well as the Working Group’s Cost and Pricing Sub-Committee, has continued to discuss Rule 465 and the NYSE’s role in establishing fees for the distribution of proxy materials. As discussed in the Proxy Working Group’s original report, the SEC proposed (and adopted subsequent to the issuance of the Proxy Working Group’s report) rules permitting companies to furnish proxy materials to shareholders through a “notice and access” model using the Internet (also known as the “e-proxy” rules). Pursuant to amendments to the proxy rules, a company choosing to follow the e-proxy model must post its proxy materials on an Internet Web site and send a Notice of Internet Availability of Proxy Materials to shareholders at least 40 days before the meeting date, which may not be accompanied by a proxy card. However, a company may send a paper proxy card accompanied by another copy of the Notice of Internet Availability of Proxy Materials 10 days or more after sending the initial notice. The Proxy Working Group has reviewed the applicability of Rule 465 in light of the new e-proxy rules, and in particular whether the NYSE’s existing fee structure covers the e-proxy system or whether new fees should be established for mailing the Notice of Internet Availability of Proxy Materials.

The Proxy Working Group and its Cost and Pricing Sub-committee heard from a number of participants in the proxy system concerning various possible ways to amend Rule 465 to establish fees for the new e-proxy rules. The Proxy Working Group also considered the information available to it with regard to the likely costs of implementing the e-proxy system, including the difficulties in determining such costs. After extensive debate and discussion, a majority of Proxy Working Group voted to recommend that the

NYSE not amend or extend Rule 465 to cover any of the new possible fees or costs involved in the e-proxy rules at this time.

The majority of the Proxy Working Group came to this conclusion after considering several factors. First, the Working Group decided that in light of the novelty of the system, as well as the fact that the system was still optional and had not been implemented by many issuers, that market forces should be allowed to determine the appropriate pricing structure for this system. The Working Group was also aware of the role of Broadridge in this system, but concluded that at this stage it was reasonable to allow the participants in the current system, including Broadridge, the brokers and issuers, to negotiate a fee structure for mailings and other matters associated with the new e-proxy rules.

On the other hand, some members of the Proxy Working Group were concerned about the NYSE not establishing a fee structure for e-proxy. Specifically, they thought that in order to make the notice and access alternative attractive to issuers, there needed to be advance knowledge about the potential costs. Moreover, the Proxy Working Group has some concerns that, without greater competition in the system, negotiation of the fee structure may be difficult, particularly for smaller issuers.

A majority of the Proxy Working Group concluded that this was a good opportunity to allow the various participants in the system to negotiate appropriate fees under the e-proxy rules, and that these negotiations could result in increasing competition in the system, both for e-proxy and more broadly. The Proxy Working Group has also requested that the Cost and Pricing Sub-Committee continue to monitor the situation and report back to the Proxy Working Group on any material developments related to e-proxy fees.

### **III. CONCLUSION**

The Proxy Working Group (including through its sub-committees) continues to meet and evaluate Rule 452, Rule 465 and other issues affecting proxy voting and shareholder communications generally. As part of this discussion, the Proxy Working Group discussed the possibility of whether some combination of the proposals reviewed by the Proxy Working Group may make it possible in the future for the NYSE to eventually end its “routine/non-routine” distinction. After extensive discussion of the various issues, the Proxy Working Group has concluded that, at this time, it is neither necessary nor appropriate to change the conclusions of its Report (except as set forth above). The Proxy Working Group unanimously recommended that the Exchange file the change regarding investment companies promptly and urge the SEC to publish the revised amendment to Rule 452 for comment as soon as possible.

The Proxy Working Group also noted that its efforts are just one part of a larger, system-wide review of the proxy voting process. The Proxy Working Group believes, as indicated in the original report, that such a system-wide review of the process is appropriate given the inter-related nature of the proxy process. In this regard, the Proxy Working Group actively supports and commends the decision announced on April 24, 2007 of the Securities and Exchange Commission to host a series of roundtable

discussions in May 2007 on shareholder rights and the federal proxy rules. The roundtable discussions, in which a number of members of the Proxy Working Group participated, brought together a wide variety of participants in the proxy process to consider the entire voting process from a variety of different points of view. The Proxy Working Group believes that ultimately this type of dialogue is what is necessary to achieve the best policy result when considering changes to the proxy process.