

## Proxy Reform

Policymakers, investors and industry leaders have recognized the need to modernize the U.S. proxy voting and communications system for some time, but proxy reform has remained a relatively disregarded issue — until now. Given the current financial landscape and the shift in corporate governance practices to empower shareholders, the issue is gaining traction, and reform has begun to take place.

More than 30 years old, the U.S. proxy voting and communications system lacks the proper means for brokers and other financial institutions to accurately account for shareholders entitled to vote on important corporate issues, and hinders companies from fully using modern technology to track shares and, in many cases, communicate directly with individual investors.

“A stronger institutional disclosure system, modified to more effectively and efficiently communicate equity-ownership information, would increase public confidence in the integrity of the United States securities markets.”

— **Jeffrey D. Morgan**, President and CEO, National Investor Relations Institute

## What's at Stake

The New York Stock Exchange (NYSE) estimated that over the past several decades, the percentage of public-company shares held in “street name” (or the names of third parties rather than the actual investor) has grown from 25 percent to 75 percent. This trend, combined with electronic proxy voting practices and changes in capital markets, has made it virtually impossible for companies to know who owns their stock.

The financial crisis exposed a major flaw in the current system regarding third-party, or intermediary, voting and its effect on transparency and shareholder protection. In essence, the crisis has raised the question of whether intermediaries — namely pension and mutual funds — were taking enough care in investing shareholders' money. In other words, were the intermediaries properly considering the beneficiaries' long-term interests when making mainly high-risk investments?

## SEC Actions

The Securities and Exchange Commission (SEC) has recently announced several proposed rules to increase transparency and protect and empower shareholders. These include:

- **Shareholder Director Nominations:** Two months ago, the SEC proposed changes to the federal proxy rules to remove obstacles to shareholders exercising their right to nominate and elect directors to company boards.  
(Comment period closed Aug. 17, 2009.)

<http://www.sec.gov/rules/proposed/2009/33-9046fr.pdf>



- **Proxy Disclosure Enhancements:** At an open meeting on July 1, 2009, the SEC voted to propose a series of rule amendments to considerably improve proxy disclosures, and enhance compensation and corporate governance disclosures, thereby enabling shareholders to make more informed voting decisions. (Comments due Sept. 15, 2009.) <http://www.sec.gov/rules/proposed/2009/33-9052fr.pdf>
- **Say-on-Pay for TARP Companies:** Also on July 1, the SEC proposed amendments requiring companies that have received financial assistance under the Troubled Asset Relief Program (“TARP”) to hold an advisory shareholder vote on executive compensation. (Comments due Sept. 8, 2009.) <http://www.sec.gov/rules/proposed/2009/34-60218fr.pdf>
- **Broker Discretionary Voting:** In the only concrete action taken at the July 1 meeting, the SEC approved an amendment to New York Stock Exchange (NYSE) Rule 452, eliminating discretionary voting in corporate director elections. <http://www.shareholdercoalition.com/SECOrder.pdf>

### A Piecemeal vs. Comprehensive Approach to Reform

At the SEC’s July 1 open meeting, Commissioners Kathleen Casey and Troy Paredes argued that a broader review of the proxy process is needed, one that also considers issues such as e-proxy, company communications with shareholders, alternatives such as proportional voting and client directed voting, “over-voting” and “empty voting,” and the influence of proxy advisory firms.

“Broker discretionary voting in director elections is just one piece of a proxy system made up of numerous interconnected parts that must work together,” Paredes said. “Changing one component but not others may have unintended and counterproductive consequences.”

Many businesses also fear that a piecemeal approach to improvement could backfire and actually result in lower proxy voting rates and proxy voting outcomes that are not reflective of the majority of shareholders’ views.

During the public comment period for the amendment to NYSE Rule 452, numerous groups offered comments and recommendations to the SEC calling for comprehensive reform of the proxy voting system, rather than changes to rules in isolation of each other. These groups include the National Investor Relations Institute, the Shareholder Communications Coalition, Business Roundtable, NYSE Proxy Working Group, Intel Corporation and more. In addition to establishing and maintaining transparency and integrity throughout the system, many of these companies believe that thoughtful deliberation and comprehensive reform must include:

- Implementing investor education initiatives;
- Eliminating the NOBO and OBO classifications;
- Requiring that beneficial owner lists be maintained by a data aggregator; and
- Ensuring that vote counts on matters before a shareholder meeting be auditable and capable of third-party verification.

The potential result of partial proxy rule changes instead of a cohesive overhaul of the system may have significant impact on corporate issuers achieving basic quorums, receiving strong support for board candidates and fending off shareholder activists. In addition, the potential costs of trying to identify and communicate with each shareholder directly, in order to get them to vote, could be high.



“Increased shareholder influence has the potential for a substantial and far-reaching ‘Sarbanes Oxley’-type impact on the governance and operations of public companies.”

— National Investor Relations Institute

### About FD

One of the world’s most highly regarded consultancies in the communications industry, FD employs more than 600 staff and advises more than 1,000 clients worldwide from hub offices in London and New York, as well as a network of wholly-owned offices around the world. FD’s services include financial public relations, investor relations, public affairs, crisis and issues management, and corporate, business-to-business and business-to-consumer communications. FD is also a market leader in M&A advisory work around the world. For more information, please visit [www.fd.com](http://www.fd.com).

### About FTI Consulting

FTI Consulting, Inc. (NYSE: FCN) is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 3,500 professionals located in most major business centers in the world, we work closely with clients every day to anticipate, illuminate, and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. For more information, please visit [www.fticonsulting.com](http://www.fticonsulting.com).

### Specialist Practices

In today’s market, the value of an enterprise is dependent on many factors. We have evolved our business to include a full suite of specialist practices to provide solutions for protecting a company’s brand, reputation and valuation.

Capital Markets Communications	Corporate Communications	Design & Digital Communications	Public Affairs	Special Situations	Strategy Consulting
Understanding and influencing drivers of share price and valuation	Building a corporate brand and enhancing reputation for the benefit of companies and their management teams	Deploying creative solutions to deliver messages to the right audiences and through a variety of channels	Comprehending the business impact of legislation and regulation	Preparing for and controlling event-driven matters	Applying insights from business analysis and stakeholder perceptions



**For more information, please contact:**

**Debra Cabral**  
General Manager  
FD Washington  
[debra.cabral@fd.com](mailto:debra.cabral@fd.com)  
+1 202 346 8808

**Beth Saunders**  
Managing Director  
Capital Markets Communications Practice  
[beth.saunders@fd.com](mailto:beth.saunders@fd.com)  
M +1 312 553 6737

[www.fd.com](http://www.fd.com)