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Richard J. Daly  
Group Co-President

February 27, 2004

Alan Beller  
Director, Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street N.W.  
Washington, DC 20549

Dear Mr. Beller:

Thank you for the opportunity to participate at your roundtable session on March 10<sup>th</sup>. Attached are two documents that I believe will be helpful to facilitate our discussion regarding shareowner access to the proxy.

The first document is a copy of the information we have sent to Mr. Zane Williams, Office of Economic Analysis at the Securities and Exchange Commission, providing details on the number of directors within Russell 3000 companies that had a 35% or greater "withhold" vote. This information is based solely on data collected by ADP in the course of providing proxy processing services on behalf of our 800 broker and bank clients.

The second document is an Executive Summary of a report (the "Report") of the Proxy Voting Review Committee, chaired by Stephen P. Norman of American Express. Richard H. Koppes, of Counsel at Jones, Day, Reaves & Pogue, was the Facilitator of the Committee. Prior to joining Jones, Day, Mr. Koppes was General Counsel of CalPERS. Other Committee participants included representatives from the American Society of Corporate Secretaries, Securities Industry Association, New York Stock Exchange, Inc., National Association of Security Dealers, Securities and Exchange Commission, The Council of Institutional Investors, Association of Publicly Traded Companies and ADP. The Report details how well the current proxy system meets the needs of the various segments of the securities industry involved in the proxy solicitation and distribution process.

It has been our experience that any proposed changes to the proxy rules lead to discussions regarding the effectiveness of the current proxy process. We believe a full understanding of how the process works today is an essential foundation to a meaningful discussion about future changes. In that regard, the Report will prove to be a valuable resource since it is the product of a Committee whose participants were drawn from all segments of the securities industry with an interest in the integrity and efficiency of the proxy process. Additionally, it identifies key interests and concerns of those industry segments in the sound and fair operation of the proxy process. By using the Report as a reference for understanding the issues raised and discussed at the Committee meetings, attention can be appropriately focused on constructive ideas for improving the process rather than on suggestions that will be deemed unacceptable by reason of their failure to have fully considered the needs of the various industry segments and the inherent complexities of the process.

Again, thank you for the opportunity to participate and, as always, I am available should you have any questions or requests for additional data.

Sincerely,

A handwritten signature in black ink, reading "Richard J. Daly". The signature is written in a cursive, flowing style with a large, prominent 'R' and 'D'.

January 27, 2004

Mr. Zane Williams  
Office of Economic Analysis  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC. 20549

Re: Securities and Exchange Commission Proposal on  
Security Holder Director Nominations  
Release #34-48626

Dear Mr. Williams:

I am contacting you to provide information that our Steering Committee (the "Committee") believes will be helpful to the SEC in connection with the security holder director nominations proposal. Additionally, we seek clarification on specific issues so that we may prepare for the potential changes effected by any new rule.

The Committee's members are representatives from corporate issuers, banks, brokers, and institutional investors. Established in 1993, the Committee provides guidance and measurement criteria for the beneficial shareowner proxy process with the ultimate goal of continuously improving such process. Meetings are held approximately three times annually, which includes one meeting per year to which Alan Beller, Elizabeth Murphy and other members of the SEC's Corporation Finance and Market Regulation departments are invited.

At a meeting held on October 29, 2003, the Committee discussed the security holder director nominations proposal, and requested ADP to provide data showing the number of public companies over the last year that had directors nominated who would have had a 35% or greater "withhold" vote. ADP used meeting data compiled from companies in the Russell 3000 to aggregate this information. The attached report, which includes information regarding the methodology, the variables and results of our research, was reviewed with the Committee. In addition, the report contains a discussion of the significant breadth of work that would have to be undertaken in order to accommodate the proposed changes and raises some issues that would require clarification in order for ADP to implement any potential changes required by the new rule.

The Committee has directed us to submit the report and supporting data to assist the SEC as it continues to consider potential rule changes related to security holder access to the proxy for purposes of director nominations. Please do not hesitate to contact me with questions regarding the attached information.

Sincerely,



Richard J. Daly  
Group President

Cc: Alan Beller  
Elizabeth Murphy  
Lillian Cunumings Brown

attachments

**ADP**  
**STEERING COMMITTEE MEMBERS**  
**REPRESENTING**  
**CORPORATIONS, INSTITUTIONAL INVESTORS, BANKS, BROKERS**

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**COMPANY**

- American Society of Corporate Secretaries
- Barclays Global Investors, N.A.
- California State Teachers' Retirement System
- Charles Schwab & Company, Inc.
- Florida State Board of Administration
- Wachovia Securities
- JPMorgan Chase
- State Street Bank and Trust Company
- Ohio Public Employees Retirement System
- Texas Instruments Incorporated
- Computer Associates

**REPRESENTATIVE**

David Smith  
Linda Selbach  
Janice Hester Amey  
Raymond DiSanza  
Elizabeth Mozley  
Peter Bowman  
Dean R. Kudich  
Harry Johansen  
Cynthia L. Richson  
Cynthia H. Haynes  
Robert B. Lamm

**Facilitator**

- Rhoda Anderson Associates

Rhoda Anderson



**REPORT TO THE ADP STEERING COMMITTEE**  
**REGARDING**  
**RUSSELL 3000 DATA**  
**JANUARY 16, 2004**

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Based upon a request at the last Steering Committee meeting we have researched the Russell 3000 companies' latest meeting data to determine if any directors would have reached a 35% "Withhold" vote.

**Methodology**

Using the Russell 3000 index as of June 2003, we went to our on-line Client Proxy Position records and to four levels of archival records to gather the shareowner records for the last closed meeting of 2,836 companies (the remaining companies did not have a meeting in the eleven months we reviewed). By analyzing each of the shareowner records we determined the director Withhold vote on each of the directors 'as cast'. The vote 'as cast' includes the instructed vote plus the broker discretionary vote.

**Variables**

The results are based on the individual underlying shareowner positions of custodians who use ADP ICS as their proxy agent. Therefore, neither beneficial share positions held at small Trust Banks (i.e., those for whom ADP does not act as proxy agent) nor any of the registered share positions are included in the analysis.

In order to perform this analysis, we were required to recreate the past year's voting tabulation environment, however, it was not possible to recreate all of the variables that impact the vote tabulation process reflected during the actual vote reporting period. Therefore, the method used for accumulating these statistics from our historical records has created some distortions. The underlying records for our bank custodian clients are counted as they are recorded on the individual client proxy position. Consequently votes instructed prior to issuance of a legal proxy to a beneficial owner (those choosing to attend and vote their shares in

person at a meeting) are included in this analysis. In specific trust agreements requiring unanimous or proportional voting, only the vote as instructed for each of the trust accounts are reflected in this analysis. Late vote instructions, if it were the only vote received, are included in the analysis. Similarly late votes for the underlying records of our broker custodian clients are counted as if they were instructed whereas they may have actually been voted discretionarily at the meeting. Late votes in the instances mentioned above are included in the analysis since we keep director Withhold vote instructions at an individual account level. The purpose of keeping late votes at the individual account level is to accommodate issuers who decide to adjourn their meetings. This allows us an opportunity to systemically change the late votes to active votes. Shares voted on legal proxies for accounts held at our broker clients are counted as having been voted discretionarily in this analysis unless there was a vote instruction prior to the legal proxy request and then they will have been counted in this analysis as they were instructed. Brokers also have an ability to identify accounts that can only be voted as instructed or only voted with management, however, neither of those conditions is reflected in this analysis and both will have been included in the discretionary vote unless they were instructed. All of the analysis is based on the records returned by the custodians in response to a record date request for the particular meeting in question. Any late manual adjustments forwarded by nominees in order to reconcile to Depository Trust Company positions are not reflected in the results.

A sampling of jobs resulted in an accuracy rate of more than 98% when considering the variables discussed above. Again, this only reflects the street positions represented by bank and broker clients at ADP.

## **Results**

### **Russell 1000 companies:**

We identified 46 meetings that had at least one director with a Withhold vote 'as cast' of 35% or greater.

Within the 46 meetings there were a total of 76 directors with a Withhold vote 'as cast' of 35% or greater.

### **Russell 2000 companies:**

We identified 69 meetings that had at least one director with a Withhold vote 'as cast' of 35% or greater.

Within the 69 meetings there were a total of 137 directors with a Withhold vote 'as cast' of 35% or greater.

## **Impact of Accommodating the Required System Modifications**

The Proxy Plus system currently contains approximately 2.3 million lines of code, and 80,000 function points in 1,776 programs. The systems work, that would be involved to implement the proposed change to the rules to allow qualified shareowner groups to nominate alternative director candidates to appear on the company agenda, would require modification to approximately 29% of the current 1,776 Proxy Plus mainframe programs and 40% of the current Internet programs.

In addition, numerous methods of voting data collection have been developed over the years to accommodate ease of use in vote collection for the individual shareholders and institutional client population. Specifically, changes would need to be made to the following applications:

- ProxyEdge and ProxyEdge Lite - client server and internet deployed application suites supporting the institutional shareholder
- ProxyVote.com - an internet deployed application used to support the individual and institutional shareholder
- Telephone voting - a voice response system used to support the individual and institutional shareholder
- Paper Vote Return Optical Scanning - application developed to process incoming ballot returns from the individual and institutional shareholder
- Proxy Plus Data Entry - system used to record the votes that could not be processed via the scanning systems
- Remote Terminal Access - application used to record voting records from the custodians
- ICSONline – an Internet deployed application used to support the exchange of information between Proxy Plus and the issuer or their representative

The current practice for meetings, other than contested meetings, is that the director slate is proposed in its entirety with voting options for the shareowner to either approve all directors, withhold all directors, or approve all directors except any individual directors chosen by the shareowner. Therefore in the current Proxy Plus process, the director slate is kept as a single proposal with the exceptions recorded. In the SEC's proposed rule change, the number of possible directors presented to the shareowner is different than the number to be elected. That would require the system to keep track of the 'for' votes on each director, thereby causing each director to become a separate proposal. In essence, it reflects complexities similar to that experienced in a contested situation. Solicitors, transfer agents and tabulators are all working with our current multiple proxy output and would therefore also have to make corresponding changes in their tabulation systems to accommodate the proposed new rules.

Modifications would need to be made to our current Voting Instruction Form (VIF), the foundation of our information distribution capability. It is set up to allow votes 'For all nominees', 'Withhold all nominees' or vote 'For all EXCEPT' and presumes that management's recommendation is for each director. The proposed regulation changes are silent on how the election of directors is to be presented, but for purposes of this discussion, we presume that management will be recommending on the management nominees and against the shareholder proposed nominees. We will also need clarity from the SEC regarding rules, for example if the shareowner selects more election choices than director positions available, will the vote count and for whom? Regardless, this would likely lead to increased communications between a nominee and their customer to determine the customer's voting intent. This information would need to be presented on our form in a way that the choice is clear. Such changes would be reviewed by the Steering Committee, our bank and broker clients, The American Society of Corporate Secretaries and The Securities Industry Association. In addition, the United States Postal Service must review all form changes to ensure it continues to qualify for standard (bulk) mailing and pre-sort discounts. The approval of the United States Postal Service that the redesigned form still qualifies for the standard (bulk) mailing and pre-sort discounts is critical as those discounts eliminate approximately \$500,000,000 annually from the issuer's cost of the investor communication process.

Our view of the amount of programming hours that would be required to accommodate the systems changes is over 21,400 based on our current understanding and assumptions. We have 63 development resources that would be involved in the proposed Proxy Plus and related systems modifications. Program modifications of this nature cannot happen in complete parallel in a development environment and cannot begin in earnest until any proposed rules are finalized. If we view the development timeline for these proposed changes, plus the additional time that is required for form design and review, process changes, systems quality assurance and capacity testing, the attached Gantt view shows us six to seven calendar months from the time the proposed rules are finalized until the completed changes would be available in a production environment. In other words, to be ready for the 2005 proxy season with a margin of safety required for our normal volume testing process to occur we would need to begin working on the implementation of the changes by the beginning of June 2004.

Development Timeline:

	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Forms Design	Requires clean consistency and USPS approval									
Information Presentation		Changes to PE row vote, PE Lite, PE Lite, Consolidated Datafeed								
Proposal Per Director	Fundamental change to row plus additional proposals									
Instruction Collection				Changes to PE Lite, Consolidated Datafeed						
Vote Tabulation					Tabulate votes by director slate with exceptions					
Results Reporting						Modify results report tabulator interfaces				
Integration Testing					All changes work together and no unchanged functionality was lost					
Final Quality Assurance						End of testing with comments and USPS				
Volume Testing								Preparation volume testing		



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CUSIP	ISSUER	Russell	JOB NO	RECORD DATE	BANK VOTED SHARES	BROKER VOTED SHARES	BROKER DISCRETIONARY	NUMBER DIRECTORS 35%<
00751Y	ADVANCE AUTO PARTS INC.	1000	P69272	3/31/03	16,260,496	4,491,203	5,796,176	2
018581	ALLIANCE DATA SYSTEMS CORPORATION	1000	P72856	4/14/03	13,584,546	424,270	1,963,105	1
00163T	AMB PROPERTY CORPORATION	1000	P66562	3/5/03	52,904,553	6,397,448	6,012,494	1
025932	AMERICAN FINANCIAL GROUP INC.	1000	P73801	5/2/03	17,214,532	1,756,310	3,657,511	4
00184A	AOL TIME WARNER INC.	1000	P69492	3/20/03	2,347,612,641	376,338,565	924,004,667	1
039793	ARDEN REALTY INC.	1000	P69968	3/31/03	47,695,612	3,359,640	5,540,987	2
068306	BARR LABORATORIES INC.	1000	P82267	9/2/03	36,910,586	7,801,603	7,827,211	3
074002	BEARINGPOINT INC.	1000	P82409	9/12/03	99,687,847	9,664,678	21,351,050	1
097383	BOISE CASCADE CORPORATION	1000	P66019	2/24/03	40,725,930	4,978,029	8,076,648	2
101121	BOSTON PROPERTIES INC.	1000	P67205	3/12/03	61,054,909	10,010,166	9,073,685	1
151313	CENDANT CORPORATION	1000	P67871	3/24/03	592,666,240	108,107,750	198,852,931	1
156708	CEPHALON INC.	1000	P69894	4/3/03	32,152,130	6,079,051	11,938,090	1
192446	COGNIZANT TECHNOLOGY SOLUTIONS CORP.	1000	P71858	4/17/03	30,497,559	14,310,965	16,814,855	2
218868	CORINTHIAN COLLEGES INC.	1000	P83262	10/1/03	15,586,316	2,978,619	6,063,616	1
224051	COX RADIO INC.	1000	P66075	3/7/03	29,020,122	1,661,498	3,746,037	1
251591	DEVELOPERS DIVERSIFIED REALTY CORP.	1000	P69467	3/31/03	44,638,796	17,699,102	14,823,984	2
25271C	DIAMOND OFFSHORE DRILLING INC.	1000	P66713	3/24/03	41,782,213	8,011,055	20,106,333	3
31410H	FEDERATED DEPARTMENT STORES INC.	1000	P69970	4/4/03	130,972,044	13,834,509	28,719,503	3
345838	FOREST LABORATORIES INC.	1000	P78821	6/20/03	253,183,055	32,038,584	43,295,311	1
368710	GENENTECH INC.	1000	P65552	2/24/03	113,609,636	32,773,596	49,653,412	2
369550	GENERAL DYNAMICS CORPORATION	1000	P67497	3/14/03	96,728,063	18,586,186	25,734,762	1
375558	GILEAD SCIENCES INC.	1000	P70461	4/4/03	133,398,675	23,370,501	35,949,889	1
37940X	GLOBAL PAYMENTS INC.	1000	P81713	8/25/03	20,966,677	1,607,869	2,904,794	1
42222G	HEALTH NET INC.	1000	P65622	3/20/03	83,691,310	13,394,886	14,418,169	2
444859	HUMANA INC.	1000	P65368	3/19/03	88,888,057	22,521,458	27,668,049	1
45811K	INTEGRATED CIRCUIT SYSTEMS INC.	1000	P82347	9/19/03	58,273,993	4,935,238	4,950,688	1
492914	KEY ENERGY SERVICES INC.	1000	P74636	4/21/03	77,086,198	15,060,157	22,561,198	1
529771	LEXMARK INTERNATIONAL INC.	1000	P67758	3/7/03	87,725,554	10,342,015	15,445,433	2
56418H	MANPOWER INC.	1000	P65309	2/18/03	57,109,377	4,050,738	5,267,786	1
573284	MARTIN MARIETTA MATERIALS INC.	1000	P67362	3/20/03	34,229,569	4,733,379	6,879,255	3
64117V	NETSCREEN TECHNOLOGIES INC.	1000	P63729	1/6/03	20,362,935	5,459,104	12,494,877	1
67090F	NUVEEN INVESTMENTS INC.	1000	P69511	3/17/03	7,924,341	2,717,970	2,942,623	1
695156	PACKAGING CORPORATION OF AMERICA	1000	P67764	3/18/03	43,976,835	3,743,341	5,060,820	2
704549	PEABODY ENERGY CORPORATION	1000	P67765	3/14/03	18,655,153	2,916,724	5,246,902	1

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CUSIP	ISSUER	Russell	JOB NO	RECORD DATE	BANK VOTED SHARES	BROKER VOTED SHARES	BROKER DISCRETIONARY	NUMBER DIRECTORS 35%<
717124	PHARMACEUTICAL PRODUCT DEVELOPMENT INC.	1000	P66034	3/14/03	29,753,753	6,742,082	6,577,487	1
74460D	PUBLIC STORAGE INC.	1000	P68985	3/14/03	48,449,440	9,472,101	12,100,478	1
783549	RYDER SYSTEM INC.	1000	P65869	3/7/03	40,828,990	8,536,727	7,071,170	1
85590A	STARWOOD HOTELS & RESORTS WORLDWIDE INC	1000	P67559	3/20/03	151,993,153	11,434,372	15,831,866	3
21988R	THE CORPORATE EXECUTIVE BOARD COMPANY	1000	P72203	4/21/03	29,185,718	2,340,352	3,621,847	2
713409	THE PEPSI BOTTLING GROUP INC.	1000	P67429	3/31/03	119,402,697	8,534,405	19,110,082	2
874161	THE TALBOTS INC.	1000	P69738	4/3/03	15,297,272	1,514,271	4,648,341	2
887100	THE TIMBERLAND COMPANY	1000	P65424	3/19/03	11,492,838	6,492,096	3,411,203	2
908906	UNIONBANCAL CORPORATION	1000	P65841	2/28/03	34,264,107	2,456,072	4,683,820	4
922122	VARCO INTERNATIONAL INC.	1000	P68619	3/24/03	60,910,474	16,193,518	13,530,962	1
94106L	WASTE MANAGEMENT INC.	1000	P69270	3/21/03	413,032,007	53,130,821	62,632,878	1
941848	WATERS CORPORATION	1000	P67715	3/18/03	77,692,598	17,094,979	12,945,272	2
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CUSIP	ISSUER	Russell	JOB NO	RECORD DATE	BANK VOTED SHARES	BROKER VOTED SHARES	BROKER DISCRETIONARY	NUMBER DIRECTORS 35%<
90130N	21ST CENTURY INSURANCE GROUP	2000	P70615	4/28/03	17,298,213	2,786,412	2,134,908	7
002896	ABERCROMBIE & FITCH CO.	2000	P69171	3/27/03	63,857,434	11,835,885	17,147,193	1
008252	AFFILIATED MANAGERS GROUP INC.	2000	P71524	4/16/03	14,778,051	2,414,930	5,027,520	1
012348	ALBANY INTERNATIONAL CORP.	2000	P65717	3/10/03	19,116,143	2,363,369	3,104,297	7
012653	ALBEMARLE CORPORATION	2000	P64630	2/14/03	15,803,088	3,578,279	5,140,517	2
03674E	ANTEON INTERNATIONAL CORPORATION	2000	P69880	3/28/03	11,186,739	4,082,279	2,075,663	3
04269Q	ARRIS GROUP INC.	2000	P69975	4/7/03	28,763,487	5,890,894	20,228,222	1
076446	BEDFORD PROPERTY INVESTORS INC.	2000	P69177	3/14/03	7,249,594	2,674,089	3,856,085	1
08160H	BENCHMARK ELECTRONICS INC.	2000	P67720	4/2/03	15,523,919	3,245,321	4,673,107	1
120113	BUILDING MATERIALS HOLDING CORPORATION	2000	P68137	3/13/03	9,559,933	1,182,295	1,431,575	1
140909	CARAUSTAR INDUSTRIES INC.	2000	P66867	3/14/03	15,526,590	2,604,765	4,050,114	1
147448	CASELLA WASTE SYSTEMS INC.	2000	P81462	8/21/03	13,124,783	2,445,925	4,577,789	1
147528	CASEY'S GENERAL STORES INC.	2000	P81047	8/1/03	30,455,854	5,010,567	5,061,763	1
125071	CDI CORP.	2000	P68205	3/14/03	7,890,025	1,898,648	1,056,690	2
192479	COHERENT INC.	2000	P62201	2/7/03	20,911,122	2,814,940	4,563,782	1
203668	COMMUNITY HEALTH SYSTEMS INC.	2000	P69809	4/1/03	38,516,782	3,217,534	6,520,066	1
206016	CONCEPTUS INC.	2000	P72035	4/16/03	9,890,868	2,734,101	8,032,668	1
208192	CONNETICS CORPORATION	2000	P64841	3/20/03	14,870,624	5,404,585	7,195,717	1
20854P	CONSOL ENERGY INC.	2000	P67954	3/12/03	7,987,839	3,348,769	6,868,192	3
231082	CUMULUS MEDIA INC.	2000	P67998	3/14/03	29,164,597	4,099,656	7,297,975	1
266605	DURECT CORPORATION	2000	P69907	4/7/03	11,324,014	3,336,882	6,112,445	1
296643	ESPEED INC.	2000	P82330	9/9/03	17,255,646	2,368,517	4,227,105	4
30218U	EXPRESSJET HOLDINGS INC.	2000	P67027	3/10/03	17,430,950	1,254,447	6,412,673	1
307675	FARMER BROS. CO.	2000	P62000	11/26/02	371,100	39,470	51,397	4
30241L	FEI COMPANY	2000	P67389	3/17/03	16,452,189	2,219,017	3,593,412	1
36466R	GAMESTOP CORP.	2000	P71593	5/8/03	10,479,525	3,106,499	5,514,033	1
384313	GRAFTECH INTERNATIONAL LTD.	2000	P67130	4/1/03	40,406,721	4,993,753	6,404,681	1
435569	HOLLINGER INTERNATIONAL INC.	2000	P67087	3/24/03	46,400,309	3,753,752	6,997,248	5
437306	HOME PROPERTIES OF NEW YORK INC.	2000	P67170	3/10/03	15,785,728	3,770,755	4,504,082	1
439104	HOOPER HOLMES INC.	2000	P67288	4/4/03	39,229,661	13,384,404	11,972,874	1
440327	HORACE MANN EDUCATORS CORPORATION	2000	P70984	3/31/03	32,968,878	2,626,177	1,881,198	2
444482	HUGHES SUPPLY INC.	2000	P71518	3/26/03	16,065,553	2,113,133	3,066,297	1
448774	HYDRIL COMPANY	2000	P70660	4/4/03	12,890,883	715,033	892,748	1
46060X	INTERNET SECURITY SYSTEMS INC.	2000	P70861	4/7/03	25,136,913	3,828,209	13,649,622	1

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CUSIP	ISSUER	Russell	JOB NO	RECORD DATE	BANK VOTED SHARES	BROKER VOTED SHARES	BROKER DISCRETIONARY	NUMBER DIRECTORS 35%<
49427F	KILROY REALTY CORPORATION	2000	P65563	3/4/03	19,337,238	2,622,181	2,592,422	2
494580	KINDRED HEALTHCARE INC.	2000	P68798	3/26/03	8,146,283	5,286,955	2,703,137	2
501049	KROLL INC.	2000	P72368	4/22/03	23,928,789	6,010,191	8,516,433	1
482740	K-V PHARMACEUTICAL COMPANY	2000	P78854	7/1/03	10,977,293	3,138,700	6,580,211	2
543162	LONGS DRUG STORES CORPORATION	2000	P69258	4/8/03	9,399,568	7,197,762	6,272,889	2
550819	LYDALL INC.	2000	P67759	3/12/03	11,293,089	1,389,339	1,502,626	1
577081	MATTEL INC.	2000	P65359	3/19/03	257,375,941	60,251,691	59,161,779	1
589889	MERIT MEDICAL SYSTEMS INC.	2000	P73403	4/17/03	6,799,087	1,699,560	2,777,595	2
59163F	METRO ONE TELECOMMUNICATIONS INC.	2000	P68650	4/2/03	6,356,531	5,962,749	4,515,316	1
552953	MGM MIRAGE	2000	P72037	3/25/03	46,421,259	10,860,138	12,637,031	2
594793	MICREL INCORPORATED	2000	P69602	4/1/03	45,477,502	10,515,966	10,343,133	1
624581	MOVIE GALLERY INC.	2000	P72202	4/17/03	17,905,492	6,588,951	4,614,271	4
670509	NUEVO ENERGY COMPANY	2000	P65416	4/4/03	13,336,396	1,408,968	3,702,220	1
671044	OSI SYSTEMS INC.	2000	P61194	10/3/02	5,210,826	1,235,695	3,712,905	2
691471	OXFORD HEALTH PLANS INC.	2000	P67966	3/14/03	47,916,405	10,595,135	18,206,819	1
695210	PACKETEER INC.	2000	P69731	4/4/03	16,160,689	2,134,739	8,232,131	1
695257	PACTIV CORP.	2000	P68420	3/19/03	104,927,240	19,617,289	14,978,319	1
69562K	PAIN THERAPEUTICS INC.	2000	P71002	4/10/03	8,389,600	2,723,528	6,165,150	1
703224	PATINA OIL & GAS CORPORATION	2000	P69482	4/7/03	15,916,310	4,822,751	5,192,095	2
707569	PENN NATIONAL GAMING INC.	2000	P70944	4/4/03	16,231,834	5,945,583	7,166,152	2
73640Q	PORTFOLIO RECOVERY ASSOCIATES INC.	2000	P69594	3/26/03	2,353,118	330,882	1,111,025	1
75025N	RADIANT SYSTEMS INC.	2000	P78995	6/16/03	10,059,226	1,302,373	5,502,419	2
759543	REMEC INC.	2000	P75053	4/29/03	36,511,583	6,153,229	10,581,387	1
817320	SEQUA CORPORATION	2000	P67829	3/19/03	3,866,770	693,604	873,539	11
817492	SERENA SOFTWARE INC.	2000	P77649	5/16/03	14,486,650	2,645,805	6,248,718	2
827048	SILGAN HOLDINGS INC.	2000	P70125	4/17/03	5,975,133	3,546,665	1,356,162	1
827064	SILICON VALLEY BANCSHARES	2000	P64760	2/18/03	20,577,166	5,607,371	8,518,638	1
83568G	SONOSITE INC.	2000	P68649	3/18/03	8,820,869	1,390,368	2,420,826	9
846425	SPANISH BROADCASTING SYSTEM INC.	2000	P74879	5/12/03	22,868,393	2,462,974	8,162,807	3
86279T	STRATEX NETWORKS INC.	2000	P76156	5/22/03	51,139,139	7,748,679	18,688,244	1
879939	TELETECH HOLDINGS INC.	2000	P70409	3/25/03	19,731,836	2,199,813	9,418,349	1
88162F	TETRA TECHNOLOGIES INC.	2000	P64681	3/25/03	10,803,235	1,743,211	1,528,231	2
896239	TRIMBLE NAVIGATION LIMITED	2000	P68651	3/24/03	14,747,303	4,036,784	7,940,336	2
903844	ULTICOM INC.	2000	P71732	4/17/03	6,863,208	1,788,786	1,816,720	2
957541	WESTELL TECHNOLOGIES INC.	2000	P81287	8/4/03	21,128,703	6,676,803	18,894,318	3
								137

February 28, 2002

**VIA FEDERAL EXPRESS**

Ms. Sharon Lawson  
Senior Special Counsel - Office of Market  
Supervision, Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Mail Stop 10-1  
Washington, DC 20549

***Re: Executive Summary of the Proxy Voting Review Committee***

Dear Ms. Lawson:

Enclosed for your review and records is an Executive Summary of the Report (with Attachments) to the Securities and Exchange Commission on the efforts of the Proxy Voting Review Committee. I forward this document to you, for handling and/or forwarding to the appropriate individuals at the SEC, since you were a significant participant in the Committee's meetings.

Sincerely yours,

Richard H. Koppes  
Facilitator, Proxy Voting Review Committee

Enclosure

cc(w/att\*): Members of the Proxy Voting Review Committee  
(\*Executive Summary without attachments)

# PROXY VOTING REVIEW COMMITTEE

## REPORT TO THE SECURITIES AND EXCHANGE COMMISSION EXECUTIVE SUMMARY

### *Purpose of the Proxy Voting Review Committee ("the Committee")*

In the Spring of 2001, the Committee was created to bring together various segments of the securities industry which are involved in the solicitation of proxies from securities owners who hold their securities in street name. This private initiative was encouraged by the U.S. Securities and Exchange Commission.

The purpose of the Committee was to provide monitoring of the proxy voting process for beneficial shareholders of actively traded public companies through:

- ♦ Regular review of all aspects of the process to ensure the fairness and accountability to all constituencies involved;
- ♦ Evaluating reduction of costs and innovations in the process through the use of technology and other cost-saving mechanisms;
- ♦ Annual reports on their activities to the United States Securities and Exchange Commission and self-regulatory organizations;
- ♦ Making public the Committee's annual reports and availability to any party upon request.

### *Focus of the Committee in 2001*

During 2001, the Committee held eight meetings covering and focusing on:

- ♦ Reviewing the proxy process and how well the system is meeting the needs for all constituencies;
- ♦ Addressing the appropriateness and fairness of fees under the present system;
- ♦ Making recommendations regarding the pilot project.

### *Committee Members*

The Committee membership includes:

- Rhoda Anderson – President of Rhoda Anderson Associates, LLC, a proxy system consulting firm
- Kenneth A. Bertsch, Director of Corporate Governance at TIAA-CREF
- Brian T. Borders – President of the Association of Publicly Traded Companies
- Richard J. Daly - Group Co-President of ADP Brokerage Services Group
- Janice Hester-Amey - Principal Investment Officer, Equities and Corporate Governance of the California State Teachers' Retirement System
- Donald D. Kittell – Executive Vice President of the Securities Industry Association
- Stephen P. Norman - Secretary of American Express Company (representing the ASCS)
- James E. Buck – Senior Vice President and Secretary of the New York Stock Exchange (recently retired)
- Gordon Garney – Managing Director of the Council of Institutional Investors
- Shirley Weiss – Counsel, National Association of Security Dealers
- Richard H. Koppes – Of Counsel to Jones, Day, Reavis & Pogue and the former General Counsel of CalPERS, serves as staff/facilitator to the Committee
- David W. Smith – President, American Society of Corporate Secretaries, is a participant in the Committee meetings

### *Some Findings of the Committee*

- ♦ Institutional investors require that the highest level of services be maintained and that technological investments be made to ensure the accuracy and reliability of the proxy systems. Institutions had significant concerns around a proposed idea to allow issuers to control the beneficial process.
- ♦ During its deliberations, the Committee received extensive evidence that the pilot fee schedule successfully reduced the total costs to issuers for the proxy process.
- ♦ The services required for street processing are very different, more comprehensive and much more complex than the services provided for registered processing.
- ♦ The following services, although not required, have been provided for beneficial processing under the existing fee structure. Registered processing, while not requiring all of these services, charges additional fees for services such as telephone voting, internet voting, electronic distribution, householding, etc:
  - Fiscal Year End Profile Distribution to 12,000+ Issuers
  - Search Card Notification Processing
  - Ad Hoc Request for Material Estimates
  - Consolidated Search and Proxy Record Date Shareowner Positions Material Requirements Request to Nominee/Clients (across 800 nominees)
  - Provide Nominee/Client with Report Confirming Total Positions and Shares Transmitted for Each CUSIP (across 800 nominees)
  - Rule All Proposals (Based on NYSE)
  - Assignment of Proposal Code
  - Addition and/or Deletion of Record Date Beneficial Owner Name and Address Information
  - Vote Reporting by Nominees
    - o 15/10 Days; 9 Days Before Meeting Through Day of Meeting
    - o 2 Vote Reports Day Before Meeting
    - o Day of Meeting Votes
  - Electronic Voting Transmission to Solicitor and Transfer Agent
  - Vote Inquiries (Banks, Brokers and Institutions Not Voted)
  - Consolidated Voting Across Nominees
  - Confidentiality of Client Beneficial Shareowner Data
  - Exception Processing
  - Co-Trustee Processing
  - Internet and Telephone Votes for 12,000+ Issuers
  - Internet distribution for 12,000+ Issuers
  - DTC Over Vote Monitoring
  - Vote Confirmation Reporting
  - Advanced Record Date Notification
  - Meetings with Dissenters Rights Reporting
  - Non-Mailed Accounts as of First Issued Vote Reporting
  - Closed Meeting Report
  - Bank, Broker Confirmation of Mailing
  - Bank, Broker Vote Confirmation Summary
  - Disaster Recovery
  - Interactive Voice Response System
  - Affidavit of Compliance (Self-Reporting Mechanism Between ADP and its Clients as Required by NYSE)

- Annual Procedural Audit Report as Required by NYSE
- Weekly Measurement Criteria
- Vote Statistical Audit
- ISO 9002 Certification
- Consolidated Invoicing (Across 800 Nominees)
- Building and Maintenance of Householding Database (Across 800 Nominees)
- Building and Maintenance of Email Database (Across 800 Nominees)
- Funding of Postage Expense on Behalf of Issuer
- Bank/Broker Expense
- Maintenance of Records for 3 Years
- ♦ Large issuer street unit costs are being reduced each year when considering the impact of paper and postage savings. These savings will continue to grow.
- ♦ ASCS/Rhoda Anderson survey found that only 416 issuers provided Internet delivery to registered shareowners; conversely, through ADP 830 issuers provided Internet delivery during proxy season and was available to all 14,000 issuers.
- ♦ Savings from suppressions are projected to reach \$581 million by 2005 (using NIRI's average costs for printing and ADP's average postage rates).
- ♦ Suppressions benefit larger issuers the most.

### Conclusions and Recommendations

- ♦ Cost incurred by issuers of maintaining registered shareowners far exceeds that of street shareowners.
- ♦ Fees for registered processing are as much as 400% higher than the beneficial side considering size of company.
- ♦ All issuers will continue to enjoy lower unit costs due to increased suppressions.
- ♦ Institutions will not support any reduction/deterioration in service levels and capabilities from what exists today.
- ♦ Accuracy and reliability levels will continue at near flawless levels.
- ♦ Each \$.05 reduction in unit fees equals \$12.4 million. Each 5% increase in suppressions is equal to \$20 million to \$70 million (variation caused by largest issuer average printing costs versus NIRI average costs).

The Committee acknowledged the significant infrastructure costs (much higher than registered) required to service the beneficial in street proxies. It also acknowledged the extraordinary reliability and accuracy provided by ADP in servicing this market.

After evaluating the reduction of the costs and innovation in the process through the use of technology, the Committee agreed that the following changes in fees are fair and reasonable.

	<u>Current</u>	<u>Proposed</u>
Unit Fee	\$0.50	\$0.40
Nominee Fee	\$20.00	\$20.00
Nominee Unit Fee	--	\$0.10* / \$0.05 **
Suppression Fee	\$0.50	\$0.50* / \$0.25 **

\* Under 200k Positions      \*\* Over 200k Positions



The Committee believes that the lowering of the unit fees and suppression fees for the large issuers (at least 200,000 nominee accounts) further tiers the fees. An additional \$11 million or 14.7% of fee savings will be realized by large issuers in the first year. These fees reflect the economies of scale of approximately 200 of the largest corporations offset by peak season benefits and institutional requirements necessary primarily to service the large issuers. As reported by ADP, costs to provide services to institutions represent approximately 34% of total costs while revenue from institutional accounts are less than 8%. In addition, peak season requirements equal approximately 20.0% of total costs, which is primarily allocable to the largest issuers.

Other fee structures reviewed by the committee would cause significant controversy without improving the current cost and reliability benefits.

The Committee favors permanent approval of the proposed proxy fees based on the conclusions reached from the significant review process that had been undertaken.

### Longer Term Focus of the Committee

The longer term focus of the Committee might be to further address the design and governance of the proxy system itself, including ways of maintaining the efficiencies and integrity of a singular utility which allows for the effective participation and influence of all interested parties, particularly issuers, broker and banks, institutional and retail shareowners and regulators in the on-going oversight of the process.

### Summaries of the Committee's Meetings are Presented Below

#### Initial Meeting March 29, 2001

Those present were:

#### PVRC Members:

-Rhoda Anderson  
(Rhoda Anderson Associates)  
-Brian Borders  
(APTC)  
-Rich Daly (ADP ICS)  
-Janice Hester-Amy  
(CalSTRS) by phone  
-Don Kittell (SIA)  
-Steve Norman (ASCS)

#### SEC Staff:

-Belinda Blaine  
(Market Regulation)  
-Sharon Lawson  
(Market Regulation)  
-David Martin (Corporation Finance)  
-Elizabeth Murphy  
(Corporation Finance)  
-Kelly Riley (Market Regulation)

#### Other Participants:

-Richard Koppes  
(Facilitator of Committee)  
-Maryellen Andersen  
(ADP ICS)  
-David Smith (ASCS)

The Committee held its first meeting with the Securities and Exchange Commission staff from the Divisions of Corporation Finance and Market Regulation. David Martin, Director of the Division of Corporation Finance, said that possibly the Committee would provide valuable information for the commission to consider as it reviews rule proposals regarding proxy fees. Belinda Blaine of the Division of Market Regulation said that the standards for the filing should include equitable allocation, reasonableness and fairness. She said that external information and evaluations that the Committee could make available to the staff would help with analysis. (The

Commission staff provide summary background information regarding all the comment letters on fee issues to the Committee).

It was decided that deregulation would be considered as an item for review during "phase two" of the Committee after the Committee's first priorities were resolved. The longer term focus of the Committee would be to further address the design and governance of the proxy system itself, including ways of maintaining the efficiencies and integrity of a single utility while allowing for the effective participation and influences of all interested parties, particularly issuers, brokers, banks and institutional and retail shareowners and regulators in the on-going oversight of the process.

Steve Norman was elected Chairman of the Committee, and Rich Koppes was named Secretary of the Committee.

During the eight ensuing meetings, the Committee focused on:

- Reviewing the proxy process and how well the system is meeting the needs for all constituencies;
- Addressing the appropriateness of reasonableness and fairness of fees under the present system; and
- Making recommendations regarding the pilot project.

#### May 15, 2001

Those present were:

##### Committee Members

-Rhoda Anderson (Rhoda Anderson Associates)  
-Ken Bertsch (TIAA-CREF)  
-Brian Borders (Representing APTC)  
-Jim Buck (NYSE)  
-Rich Daly (ADP ICS)  
-Gordon Garney (CII)  
-Don Kittell (SIA) by phone  
-Steve Norman (ASCS)

##### Other Participants:

-Richard Koppes (Secretary to Committee)  
-Maryellen Andersen (ADP ICS)  
-Kelly Riley (SEC, Market Regulation)  
-David Smith (ASCS)  
-Shirley Weiss (NASD)  
-John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- ♦ The Committee's By Laws (attachment 1)
- ♦ The background of rules relating to proxy distribution and reimbursement starting in 1927 to the present (attachment 2).

**June 13, 2001**

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA) by phone
- Steve Norman (ASCS)

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Marty Dunn (SEC Corporation Finance) by phone
- Kelly Riley (SEC, Market Regulation) by phone
- David Smith (ASCS)
- Shirley Weiss (NASD)
- John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- ♦ ADP's development and implementation of technologies for electronic proxy service, touch tone telephone voting, electronic vote reporting, electronic distribution, householding, nominee coordination, account suppression, lower issuer costs and improved communication (attachment 3).
  1. The implementation of the technologies (telephone voting, ProxyEdge, Internet voting) has lead to great quorum results.
    - Shares returned electronically
      - 1996 – 48.5%
      - 2001 – 70.9%
  2. Client survey results of all constituencies—issuers, institutional, broker – showed a 94.9% rating of good, very good or excellent in 2000 and 96% in 2001.
    - David Smith of ASCS said that his constituency agrees that ADP provides accuracy and good service.
  3. Issuer costs are reduced because of suppressions and printing, paper and postage savings.
    - Through account suppression and Internet voting, the percentage of accounts grew from 7.87% in 1998 to 16.1% in 2001.
  4. Because of ADP's technology, telephone voting, Internet voting and voting through ProxyEdge is available for every company. There is a savings to the issuer if the shareholder votes electronically. The costs are the following:
    - .03.....Internet
    - .06.....ProxyEdge
    - .18.....Telephone
    - .31.....Paper
  5. ADP maintains a preference database of shareholders who request electronic delivery of investor communications. Issuers save money because of Internet distribution.

- In 2000 there were 900,000 enrollees; now there are 2 million.
  - There can be a hyperlink to issuer and broker websites to allow enrollment for e-delivery.
  - During 2001 proxy season, 826 companies had their materials available for e-delivery.
6. To save more money, issuers need to be strongly encouraged to have their materials available on the Internet.
7. Issuers will also save because of the implementation of the new householding rules.
- ADP has developed a process to gather consents for householding at a cost of \$2 million in pipeline development and \$3 million in enhancements to mailing equipment in addition to increased operating costs and computer costs.
  - The savings to issuers as a result of nominee coordination remains constant at \$140 million.
  - The savings through account suppression will continue to increase from \$126.7 million in FY 2000 to over \$234.7 million in FY 2001. ADP projects a \$573.3 savings in FY 2005.
- ♦ A document prepared by Rhoda Anderson regarding all broker/vendor rates for 1995 (attachment 4);
    - Agreement by all was that rates were much higher in 1995.

**July 10, 2001**

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Kathleen Clark (Seward & Kissel for Alamo Direct)
- Madeline Dolan (CTA & IBM)
- Claudia Holcombe (CTA & ATT)
- Elizabeth Murphy (SEC Corporation Finance)
- Kelly Riley (SEC, Market Regulation)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- An oral report on behalf of the CTA given by Claudia Holcomb of ATT regarding the following fee issues:
  - ADP's proxy services were of high quality;
  - ADP's fees were higher than the expense levels that in-house agents incurred in servicing registered holders;

- Based on an informal survey of 12 companies, the \$.50 processing fee was 30% to 50% higher than the registered fee.
- The \$20 nominee fee represented a disproportionate burden to small issuers.
- ADP passed only half of the bulk postage savings to issuers.
- Rich Daly from ADP stated that the average issuer ADP processed had only 7,000 street name accounts, considerably smaller than the companies in CTA's survey.
- He said that the existing fees were appropriate to cover the higher unit costs of such small jobs and to provide the means to invest further in technology.
- He enumerated the numerous services that ADP provided to street name holders that were not provided by transfer agents or in-house agents to registered holders (contained in attachment 5 - "Beneficial vs. Registered Analysis," July 31, 2001, pp. 4-8).
- ♦ A report by Peter Suhr of Alamo Direct, a firm that distributes proxy material to the mutual fund industry, stated that if his firm had access to the customer data of brokerage firms, his firm could profitably distribute and tabulate proxy material to street name shareholders for fees less than charged by ADP (attachment 6).
  - He stated that advances in computing technology made the cost of transferring data files significantly less than they were in the 1980's when the NOBO fees were established.
  - He stated that ADP charged certain issuers \$.32 for processing their registered work and the street side work should be no more expensive.
  - He said that firms were prevented from bidding on the street side business because the brokers were contractually bound to ADP.
  - Rich Daly said that the fees had to be sufficiently high to encourage processors to build sufficient capacity to deliver high volumes in peak periods and in accordance with SEC turnaround time mandates.
  - He also stated that based on prior dialogues with the SEC to adopt a fee schedule that required smaller firms to pay higher fees was politically unacceptable.
  - The service provided to street name holders versus registered holders is in "Beneficial vs. Registered Analysis," July 31, 2001, pp. 4-8 (attachment 5).

### July 31, 2001

Those present were:

#### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD)

#### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Liz Fender (NASDAQ) by phone
- Kelly Riley (SEC Market Regulation)
- David Smith (ASCS)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- ♦ A report on ADP's service to street holders entitled "Beneficial vs. Registered Analysis," July 31, 2001 (attachment 5);
  - The services required for beneficial processing are different in that they are more extensive and complex than the services provided for registered processing.
- ♦ The following services, although not required, have been provided for beneficial processing under the existing fee structure. Registered processing, while not requiring all of these services, charges additional fees for services such as telephone voting, internet voting, electronic distribution, householding, etc:
  - Fiscal Year End Profile Distribution to 12,000+ Issuers
  - Search Card Notification Processing
  - Ad Hoc Request for Material Estimates
  - Consolidated Search and Proxy Record Date Shareowner Positions Material Requirements Request to Nominee/Clients (across 800 nominees)
  - Provide Nominee/Client with Report Confirming Total Positions and Shares Transmitted for Each CUSIP (across 800 nominees)
  - Rule All Proposals (Based on NYSE)
  - Assignment of Proposal Code
  - Addition and/or Deletion of Record Date Beneficial Owner Name and Address Information
  - Vote Reporting by Nominees
    - o 15/10 Days; 9 Days Before Meeting Through Day of Meeting
    - o 2 Vote Reports Day Before Meeting
    - o Day of Meeting Votes
  - Electronic Voting Transmission to Solicitor and Transfer Agent
  - Vote Inquiries (Banks, Brokers and Institutions Not Voted)
  - Consolidated Voting Across Nominees
  - Confidentiality of Client Beneficial Shareowner Data
  - Exception Processing
  - Co-Trustee Processing
  - Internet and Telephone Votes for 12,000+ Issuers
  - Internet distribution for 12,000+ Issuers
  - DTC Over Vote Monitoring
  - Vote Confirmation Reporting
  - Advanced Record Date Notification
  - Meetings with Dissenters Rights Reporting
  - Non-Mailed Accounts as of First Issued Vote Reporting
  - Closed Meeting Report
  - Bank, Broker Confirmation of Mailing
  - Bank, Broker Vote Confirmation Summary
  - Disaster Recovery
  - Interactive Voice Response System
  - Affidavit of Compliance (Self-Reporting Mechanism Between ADP and its Clients as Required by NYSE)
  - Annual Procedural Audit Report as Required by NYSE
  - Weekly Measurement Criteria
  - Vote Statistical Audit
  - ISO 9002 Certification

- Consolidated Invoicing (Across 800 Nominees)
- Building and Maintenance of Householding Database (Across 800 Nominees)
- Building and Maintenance of Email Database (Across 800 Nominees)
- Funding of Postage Expense on Behalf of Issuer
- Bank/Broker Expense
- Maintenance of Records for 3 Years
- ♦ Fees for registered processing are as much as 400% higher than the beneficial side considering size of company.
- ♦ Don Kittell of the SIA suggested that much of the large companies' dissatisfaction with the current fee structure was attributable to the issue of unitary pricing which prevented large companies from realizing economics of scale.
- ♦ David Smith, speaker for large companies, and Brian Borders, speaker for small companies, were asked to explore ways of potential compromise in this area.
- ♦ An alternative proposal presented by David Smith on behalf of the ASCS which would allow issuers to have a greater hand in controlling/determining costs in the proxy process (attachment 7).
  - Brokers would chose between mailing and tabulating proxy materials at their expense versus delegating those tasks back to the issuers at issuers' expense.
  - Rich Daly said the proposal represented a form of deregulation, which ADP supports, but needs to address many requirements of the process not considered by the proposal to make it work.
  - Don Kittell said he saw a fair amount of problems in implementation.
  - David Smith said that the proposal goes to who pays the costs and issue of control and decision-making.

### August 29, 2001

Those present were:

#### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Janice Hester-Amey (CalSTRS) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD)

#### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Amy Goodman (Gibson Dunn)
- Claudia Holcombe (AT&T)
- Rachel Kosmal (Intel) by phone
- Sharon Lawson (SEC Market Regulation)
- Kevin McKechnie (ABA- for Sally Miller)
- Elizabeth Murphy (SEC Corporation Finance)
- Kelly Riley (SEC Market Regulation)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)

The Committee reviewed and discussed the following issues:

- ♦ Don Kittell detailed reasons that he was against the ASCS proposal and presented the SIA response. (Attachment 8);

- He described how the U.S. proxy system evolved from hundreds of in-house proxy departments, of greatly differing size and efficiency, into a single utility operated by ADP.
- He stated that just as large and small issuers represented different economies of scale to the proxy processor, the cost structures and processing efficiencies of the various firms also varied greatly.
- Smaller firms lost money on the NYSE prescribed fees while the few largest national firms broke even or make money.
- He analogized the benefits of a single proxy utility to the widely acknowledged processing efficiencies of the nation's centralized share depository and record keeper, Depository Trust Company.
- He emphasized the concern for confidentiality by broker dealers is a very real issue for them.
- He suggested that competition might be introduced into the proxy system, while maintaining the advantages of a single utility, if the Committee were to invite potential vendors to submit bids to operate the utility, for a period of 5 to 7 years, with appropriate industry oversight.
- The Committee agreed that the concept of a single proxy utility, with diverse industry oversight, would be further considered.
- ♦ Institutions voice opposition to the ASCS proposal
  - Ken Bertsch of TIAA-CREF and Gordon Garney of CII stated that their organizations as well as a number of public pension funds and Taft-Hartley funds were opposed to the ASCS Proposal.
  - Gordon Garney stated that ADP is viewed as impartial but the new proposal could cause a concern of favoritism on behalf of corporate management.
  - Gordon Garney said that delegating the street-side proxy process back to issuers would potentially fragment the proxy process and by placing it more within the control of issuers, could tilt the voting process to favor corporate management.
  - Gordon Garney expressed concern regarding the confidentiality of the proxy voting system in relation to the ASCS proposal.
  - Ken Bertsch stated that while perceived as expensive, the present proxy process, administered by ADP, is viewed by the institutional community as impartial, reliable and efficiently administered.
  - Steve Norman said that the Committee did not want to weaken or politicize the "finest proxy system in the world."
  - Steve Norman continued that integrity, efficiency, fairness, audit ability and reliability of the U.S. proxy system must be maintained.
- ♦ Rachel Kosmal of the Intel Corporation presented an analysis of Intel's 2001 proxy expense (attachment 9);
  - She stated that ADP handled the distribution and tabulation of both street and registered sides with the overall variable costs for the street accounts \$1.85 versus \$1.72 for registered side.
  - She said that the one size fits all \$.50 street side processing fee and \$.50 elimination fee might be inappropriate for large issuers.
- ♦ David Smith and Brian Borders presented a preliminary tiered pricing schedule (attachment 10);



- Using ADP's proxy fee revenues, the schedule undertook to preserve the same level of revenue while allocating the issuer fees in a manner that reflected ADP's actual unit costs for servicing small, medium and large issuers.
- The proposal warranted additional analysis and discussion.
- ♦ A paper entitled "Rationale of Tiered Rates" which included an attachment regarding American Express's average unit cost for beneficial proxy (1998—\$1.23 down to \$.78 in 2001) was discussed by Mr. Daly. Also the required criteria of street proxy process were presented (attachments 11 a, b, and c).

### October 17, 2001

Those present were:

#### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Janice Hester-Amey (CalSTRS) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

#### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Paul Conn (Computershare Limited)
- Michael Foley (EquiServe)
- Claudia Holcombe (IR & AT&T)
- Rachel Kosmal (Intel)
- Kevin McKechnie (ABA – for Sally Miller) by phone
- Elizabeth Murphy (SEC Corporation Finance)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- ♦ An oral presentation of the transfer agent role in the proxy process by Michael Foley of EquiServe
- ♦ An overview by Paul Conn of Computershare Limited, a global company that has recently entered the U.S. market.
  - He believes that issuers should be permitted to choose vendor for street and registered side.
  - He admitted that if multiple vendors provided services, institutional investors might have more than one platform that they would have to log on to in order to vote.
  - The institutional investors voiced that they had efficiency concerns regarding multiple platforms.
  - The institutional investors said that there is no comparison of the U.S. proxy voting to global proxy. U.S. system is efficient, non-U.S. is not.
- ♦ ASCS Process Survey on Technology for 2001 by Rhoda Anderson (attachment 12).
  - Indicated that issuers and transfer agents were not taking advantage of opportunities to reduce paper and expenses (E-delivery)
- ♦ Tiered Pricing Review (attachment 13)
  - Large issuers felt it did not reflect economics of scale
  - The Committee did not wish to pursue a new fee structure in light of the time and effort that would be required to get approval.

## November 1, 2001

Those present were:

### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

### Other Participants:

- Maryellen Andersen (ADP ICS)
- Paul Conn (Computershare Limited)
- Rachel Kosmal (Intel)
- Sapna Patel (SEC Market Regulation)
- Bob Schifellite (ADP)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)

After a tour of ADP's facilities, the Committee reviewed and discussed the following issues:

- ♦ ADP ICS Technology Overview (attachment 14)
  - Extensive programming requirements to fully process over 90% of nation's proxies.
  - Long Island facility supported by \$300 million data center in New Jersey.
  - Data center backed up by off-site processing capability at an IBM site.
  - Redundant data files stored in an off-site storage facility.
  - ADP's processing efficiency is rated Best in Class for its industry group.
  - ADP's efforts to lower costs to issuers through householding and E-delivery of materials, ProxyEdge and through exceptional processing.
- ♦ ADP Internal and External Auditing (attachment 15)
  - ADP's Vote Audit and Control Department was formed in 1994 to oversee tabulation of shareholder votes.
  - Discussion of institutional investor driven mandates regarding vote audit, verification, efficiencies and integrity.
- ♦ Current Fee Structure
  - Rich Daly stated that he believed the current fee schedule continued to be appropriate and that issuers should focus on the great progress made in reducing paper and postage costs through ADP's advances in implementing householding, suppressing mailing of proxy materials and through electronic voting and delivery.
  - Large issuers still requested a revision to current fee schedule to reflect the economics of scale that their high volume runs present to ADP.

## November 13, 2001

Those present were:

### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Sharon Lawson (SEC Market Regulation) by phone
- Elizabeth Murphy (SEC Corporation Finance) by phone
- Sapna Patel (SEC Market Regulation) by phone
- David Smith (ASCS)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- ♦ SEC Comments
  - Betsy Murphy said that David Martin was leaving the SEC and his successor would assume duties in January 2002.
  - She said that, on behalf of the SEC, they were hopeful that this Committee or a successor Committee would continue to be a resource with reviews of the proxy system.
- ♦ ADP's document regarding the cost of delivering proxy services to the various size categories of issuers bearing in mind the economies of scale of, and the higher levels of services required by, larger issuers with large institutional holders (attachment 16).
  - The information on pages 4-6 (attachment 16) implied that 82 of the largest companies paid some \$5 million in excess in fees and that companies under 10,000 positions benefited from this \$5 million
  - Rich Daly stated that the total cost not fees is the appropriate concern of the issuers and unit costs continue to be reduced for issuers, particularly larger issuers.
  - He again committed to continuing to reduce the costs of the process by several hundred million dollars over the next two to three years.
  - Don Kittell suggested that a group meet with Merrill Lynch to discuss their cost sharing.
- ♦ ADP's documents showing:
  - (a) total cost and savings in the voting process (attachment 17)
  - (b) financial impact to certain large companies regarding potential revision to wrap and suppression fees (attachment 18).
    - o Gordon Garney stated that the CII could not vote to support this proposal since it only favored these few large issuers and penalized most of the other issuers by raising the fees.

**November 28, 2001**

Those present were:

Committee Members

- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC) by phone
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee) by phone
- Maryellen Andersen (ADP ICS)
- Sharon Lawson (SEC Market Regulation) by phone
- Elizabeth Murphy (SEC Corporation Finance) by phone
- Sapna Patel (SEC Market Regulation) by phone
- David Smith (ASCS)
- Stephen Walsh (NYSE)

The Committee reviewed and discussed the following issues:

- ♦ Proposal on fees (attachment 19)
  - Approximately 200 of the largest US issuers would see a reduction in fees because of their economics of scale (200,000 street name shareholders).
  - Gordon Garney endorsed the proposal because it reduces fees to larger issuers without raising fees for others.
  - Brian Borders supported the proposal and indicated that it was a good result for all.
  - Ken Bertsch endorsed the proposal and noted that eliminating the “pilot” does not tie anyone’s hands for the future.
  - All members voted in favor of proposal with Shirley Weiss abstaining.
  - The Committee believes that the proposed fees appear reasonable when considering the service levels required and the overall costs of suppression, that is, the elimination of duplicate mailings.
  - The Committee concurs in the request of institutional investors that the current level of service be maintained and that continued technological investments are necessary to ensure the accuracy and reliability of the proxy system and to obtain further cost savings.
  - The Committee requests that the rules be finally adopted and that the period of the pilot should end.