THE STA
SECURITIES TRANSFER ASSOCIATION, INC.

Established 1911

December 3, 2019

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-725

Dear Secretary Countryman:

The Securities Transfer Association (STA) appreciates the opportunity to submit this letter as the SEC continues to review the proxy process and as the various working groups come together to review and make recommendations about specific aspects of the proxy system.

As the predominant tabulators of record for their clients' shareholder meetings, transfer agents continue to witness a sub-optimal proxy process where significant over-voting still occurs and must be resolved, sometimes at very short notice, during the tabulation process. Additionally, the existing NOBO/OBO discipline has unnecessarily contributed to the lack of transparency in the voting process and its high cost to issuers.

On behalf of our members, the STA respectfully submits the following two priorities as essential to successful proxy reform:

1. Strict reconciliation of voting entitlement should be a requirement of any entity soliciting proxies or voting instructions from investors. This requirement should apply universally, as anything less undermines the integrity of the entire process: vote solicitation and tabulation and an accurate vote confirmation process. For the avoidance of doubt, reconciliation, from the perspective of the STA, means brokers and banks must reconcile their record date positions BEFORE mailing requests for voting instructions and must make appropriate adjustments (such as debits) to client positions to ensure the same number of voting instruction forms are issued and do not exceed the entitlements represented by shares held. As noted below, the vast majority of brokers currently engage in pre-mailing reconciliation, so mandating this for all should not be overly controversial;

2. The use of NOBO data, including email addresses, must be allowed at the issuer's direction for proxy distribution, and the NOBO reports must be distributed electronically. OBO status should be opt-in only, investors should be adequately informed of its implications, and it should never be the default in any investor account opening/modification documents.

The working group on end to end vote confirmation held its first meeting on November 4th and commenced discussion on the topics of vote confirmation and the reconciliation of entitlements. As noted above, a lack of pre-mailing reconciliation undermines the efficiency, the effectiveness and the integrity of the voting system, as well as the implementation of a vote confirmation process, which has been positioned as a highly desirable short-term priority by the Commission. Vote confirmation can be implemented in the current environment, in the sense that a confirmation can be issued against any vote, both when it is lodged and after the meeting to confirm how it was counted at the meeting. Reconciliation, however, goes to the foundational issue of validation of entitlement to vote and must also be addressed, either in parallel with end to end vote confirmation or as part of the long-term proxy reform and technology working group agenda. Anything less will continue to taint the integrity of the voting process.

While reconciliation is an important component of an efficient and effective voting system, as noted above, it is not an absolute pre-requisite to the introduction of a vote confirmation system. However, the overall efficiency of the system would be enhanced if reconciliation were a mandatory component of the system. We make this point only because we understand there are still some differences of opinion within the brokerage community about reconciliation of omnibus positions and whether reconciliation should be conducted pre or post mailing of entitlements. This is an important principle that the Working Group fielding "End-to-End Vote Confirmation" will need to address in its analysis and recommendations.

1.Vote Reconciliation

Entities charged with soliciting and tabulating investors' votes should be required to strictly reconcile their security records to their eligible voting positions. This requirement should apply universally, not only to transfer agents with respect to holders of record appearing on the register, but more importantly to financial intermediaries soliciting votes from beneficial owners.

Financial intermediaries should be required to validly establish their voting entitlement with the issuer's tabulator who is charged with maintaining the voting register. Understanding that a financial intermediary may be holding its position in multiple locations and forms, they must be prepared to execute legal/omnibus proxies in respect of such positions. This may occur when some of a financial intermediary's position is held in directly registered form or with another custodian/participant in DTC or another Central Securities Depository (CSD). Unless the industry can agree on appropriate protocols for such situations, the incidence of over-voting will continue since multiple positions held in different forms (i.e. registered, beneficial within DTC and beneficial within a different CSD through a chain of custody) are not always visible to the tabulator.

The absence of such reconciliation permits voting rights to be used by investors who are not entitled to vote and potential disenfranchisement of those who are entitled. These circumstances also contribute to the occurrence of over-voting, which in turn undermines the integrity of the system. It also makes for a very time-consuming process for tabulators to analyze, and often may not be appropriately resolved.

As noted in the STA's two prior letters to the Commission, while the occurrence of over-voting has appeared to decline in recent years, it remains a significant issue, diminishes confidence in the proxy voting process and erodes the integrity of the system itself. Fundamentally, only properly entitled shareholders should be eligible to vote and to achieve this, positions should be reconciled by all entities at record date (with appropriate adjustments made to ensure no more votes are issued than shares held by or validly accessible to the relevant party), to determine eligibility to vote *prior* to mailing proxies or voting instruction forms to shareholders. Below is a sample of meetings tabulated by our members in 2018 detailing their over-vote experience:

# of meetings tabulated: 183
# of meetings experiencing suspected over voting: 136
# of suspected over voting incidents/shares: 757 / 178,675,863
# of true over voting incidents / shares: 134 / 5,879,883

Please note that the 134 instances of true over-voting resulted in 5.9 million votes being discarded…votes cast by investors who believed they were counted. We believe that while the Over Reporting Prevention Service offered by a service provider has resulted in a reduction in the number of over-vote occurrences, it has not solved the problem, but rather, simply masked it.

A number of protocols need to be agreed between industry stakeholders about how certain votes should be managed in certain circumstances, e.g. when a broker has a position in DTCC and a separate position in another CSD, such as The Canadian Depository for Securities (CDS). The aggregate DTC/CDS position is not visible to the tabulator, unless the broker takes appropriate action with the other CSD, in this case CDS. Currently, issuers are expected to chase these positions down in order to count the broker or investor vote. Routinely, they would have no knowledge that a party maintains securities holdings in two or more modes and potentially in two or more different systems. Agreeing on new protocols for managing these situations will enable the industry to at least partly address the over-voting (or over-reporting) problem.

Industry protocols will also support the reconciliation of entitlements. Reconciliation will solve the current industry problem of over-voting. Furthermore, end-to-end vote confirmation will then provide even greater confidence in the voting system as some of the weakest aspects of the proxy plumbing are repaired (through the advent of appropriate industry protocols) in the lead up to broader reform that will improve the system overall for the benefit of all stakeholders.

We also refer to submitted letters taking a similar stance to the STA's. On April 8, 2019, the Shareholder Communications Coalition responded to the SEC's request for interim and immediate recommendations for improving the proxy system that the STA generally concurs with. On April 12, 2019, STA member Computershare submitted a letter to the SEC positing that proxy reform efforts have been stymied, in part, due to the broad, large-scale of changes proposed. Computershare proposed that an incremental approach, implementing progressive reforms over the near, medium and far term be implemented and set out a proposed timetable. A process that progressively reforms the voting system will also enable

the vote confirmation process to become more efficient and more direct between the issuer and its investors. In the current system, the vote confirmation process for positions held in beneficial form will be a ***two-step process***. It would involve a confirmation by the issuer's agent to the participant holding the aggregate block of shares (on whose behalf the votes were lodged) and separate individual confirmations issued by the participant (or its agent) to each of the investors that owns the shares and instructed the intermediary to vote. When further reforms are adopted, such as enabling issuers to effect proxy distribution directly to Non-Objecting Beneficial Owners (NOBO), as noted below in Section 2 of the letter, the vote confirmation process will be more direct between the issuer's agent and the individual investor. It will be a ***single step process***, which would mirror the process for registered shareholders. This is important not just for efficiency reasons but also for reasons of cost. In the two-step process the issuer should not be responsible for the cost of individual confirmations issued by the intermediary to its customers. However, with the advent of direct communications by the issuer to those investors, and voting by those investors directly to the issuer, then the issuer should rightly be responsible for such costs and the benefits that will flow from a more transparent system and one with fewer reconciliation risks.

The STA strongly urges the Commission to adopt a new rule requiring broker-dealers and all operatives responsible for material distribution and vote solicitation to reconcile their customers' positions and develop a list of their beneficial owners eligible to vote *before* proxy mailing occurs. Pre-mailing reconciliation is not difficult to implement operationally, and we understand that several large broker-dealers and custodian banks already use this method of reconciliation. At the meeting of the End-to-End Vote Confirmation Working Group, it was suggested that some 80% of brokers today employ this practice. While this form of reconciliation is <u>not</u> a pre-condition of the introduction of vote confirmation, this existing practice demonstrates that reconciliation is not only achievable, it is currently practiced by the clear majority of the broker-dealers today. It should not therefore be too controversial to implement as a rule on a market-wide basis. In the interim, while not a pre-condition to vote confirmation, it should be the gold standard that broker-dealers work towards (given that the majority today already do this).

<u>2.NOBO/OBO</u>

While the STA continues to believe that elimination of the NOBO/OBO distinction would significantly improve the transparency and efficiency of the proxy system, we agree that a pragmatic compromise can be reached that would retain the distinction for the near-term while transitioning to a system where investors are encouraged to adopt NOBO via price incentives, as set forth in Computershare's letter.

The ability of investors to choose anonymity must be balanced against both a) the high costs imposed on issuers to fund the intermediated administration of communications with their shareholders and voting; and b) the transparency and integrity of the system. If anonymity is a desired option to retain, there are other ways of maintaining it, such as custody accounts.

Many investors do not even understand what they signed up for, while the consequences of this choice are substantial and contrary to the principles of shareholder engagement and good corporate governance. Issuers ought to have the right to know the identity of their owners. This is a well-established feature of securities regulation in several major international markets (please see footnote 2 of Computershare's letter) and the trend to promote greater transparency to enable issuers and investors to engage with one another is only growing, such as with the introduction of the Shareholder

Rights Directive II (SRDII) in Europe in 2020. The SRDII addresses shareholder identification, shareholder communications, and voting, including vote confirmation.

The STA recommends the following reform to promote further transparency, direct communications and the accuracy in the voting process:

- At the issuer's direction, allow the use of NOBO data, including email addresses, for proxy distribution;
- Establish educational requirements for broker-dealer staff to adequately inform investors of the meaning and impact of the NOBO/OBO choice;
- Allow issuers to receive NOBO reports electronically; and
- Adopt a new rule requiring broker-dealers and all operatives that are responsible for material distribution and vote solicitation to reconcile their customers' positions and develop a list of their beneficial owners eligible to vote before mailing materials (discussed in Section 1 of this letter).

Thank you in advance for your consideration of these important issues. As always, our representatives are available for further discussion. They will continue to advance the noted policy positions to the respective Proxy Voting Working Groups.

Sincerely,

Todd J. May
President
Securities Transfer Association

Founded in 1911, the STA is the professional association of transfer agents and represents more than 130 commercial stock transfer agents, bond agents, mutual fund agents, and related service providers within the United States and Canada. STA membership consists of banks and independent transfer agents that perform record keeping services for publicly traded companies and mutual funds, corporate transfer agents that perform the same service for their own corporations, and companies that support organizations involved in the transfer of securities. Collectively, STA members serve as transfer agents for more than 15,000 publicly traded corporations, providing record keeping and other services to more than 100 million shareholders.