

CtW Investment Group

May 17, 2013

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
101 F Street, NE
Washington, D.C. 20549-1090

Re: Request for investigation and public hearing to examine proxy fee rule change (File No. SR-NYSE-2013-07) in light of JPMorgan shareholder vote

Dear Chairman White:

On February 1, 2013, the New York Stock Exchange LLC (“NYSE”) filed a proposed rule change (“NYSE Proposal”) with the Securities and Exchange Commission (“SEC” or “Commission”) to amend the fees for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications provided to investors and to establish an incentive fee for the development of an enhanced brokers internet platform (“EBIP”) to improve the proxy process.¹

The CtW Investment Group works with pension funds and other institutional investors with over \$250 billion in assets under management to enhance long-term shareholder value through active ownership.

We write to request that the SEC use its powers under the Securities Exchange Act of 1934, as amended, (the “Act”) to institute an investigation and conduct public hearings regarding the NYSE Proposal because of our concern about the fairness of the process that led to the NYSE Proposal in light of events surrounding ongoing shareholder votes at JPMorgan Chase & Co. (“JPMorgan”).²

¹ SEC, Release No. 34-68936; File No. SR-NYSE-2013-07 (Feb. 15, 2013).

² Under Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) the SEC is required at the end of a 45 day period after the publication of the filing of such a proposal to either extend its period of review of the proposal for an additional 45 days or either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The first 45-day deadline was April 8, 2013. The Commission extended the deadline for an additional 45 days “so that it has sufficient time to consider the Exchange’s proposal...and the comments received.” The second deadline is May 23, 2013. SEC, Release No. 34-69286; File No. SR-NYSE-2013-07 (April 5, 2013).

The primary beneficiary of the NYSE Proposal is Broadridge Financial Solutions, Inc. (“Broadridge”), the dominant third party provider of proxy services to the brokerage industry. Broadridge enjoys a privileged near-monopoly in providing firms like JPMorgan proxy voting services such as collecting and tallying shareholder votes.

Because Broadridge appears to have succumbed to pressure from SIFMA, and perhaps JPMorgan, to change its past practice with respect to the proxy process in favor of JPMorgan management at a critical moment in ongoing shareholder votes at the bank, our concern is heightened that the NYSE Proposal deserves closer scrutiny.

Monopolist Broadridge could tip the scales in JPMorgan shareholder vote

Earlier this week Broadridge told us and other shareholders of JPMorgan that Broadridge was abruptly ending its longstanding practice of providing shareholders advance and ongoing tallies of voting in director elections and on shareholder proposals. We are opposing the re-election of four JP Morgan directors and are asking other shareholders to do the same, for example, by mailing a letter through Broadridge to those shareholders. A second group of shareholders is engaged in a proxy solicitation effort in support of a proposal advocating the division of the roles of chief executive officer (“CEO”) and chairman of the board of directors (“Board Chairman”) at JPMorgan.

Currently, Jamie Dimon holds both roles and is conducting a vigorous public campaign to hold on to both positions. JPMorgan’s Board is supporting him in this effort and launched its own forceful campaign to convince shareholders to re-elect all Board members. Broadridge continues to give JPMorgan frequent updates on the vote tallies on both the elections and the CEO/Chairman proposal and thus has changed its past practice in favor of JPMorgan management and the incumbent board.

The proxy process must be fair and balanced

Only a balanced, transparent and accountable process insures the effective use of the shareholder franchise. This principle has animated our system of corporate governance for more than a century.

The late Louis Loss and Joel Seligman, the deans of securities law, once wrote: “[T]he corporate proxy [is] a tremendous force for good or evil in our economic scheme. Unregulated, it is an open invitation to self-perpetuation and irresponsibility of management. Properly circumscribed, it may well turn out to be the salvation of the modern corporate system.”³

Ongoing disclosure of a vote tally is critical to shareholders because it enables them to engage in effective shareholder democracy. Unlike corporate managers, who

³ Louis Loss and Joel Seligman, Fundamentals of Securities Regulation 488 (2001).

play with “other people’s money,” to borrow the words of Justice Brandeis,⁴ shareholders must deploy their own limited resources to insure that they can play an effective governance role in the firms they own.

Broadridge, however, seems to be under the impression that the proxy process is one that is controlled by brokers and incumbent corporate managers and directors. That is not the case. Shareholders must have an equal opportunity to exercise their roles in the governance process. Just as the incumbent board of JPMorgan has empowered JPMorgan *managers* to solicit proxy consents on their behalf, JPMorgan shareholders deserve an equal opportunity to put forward their case about the future of the firm that they own to fellow shareholders.

To change the rules without notice or explanation in the very last stage of this shareholder vote ties the hands of one competitor behind their backs. This is no longer a fair fight.

Monopolist Broadridge acted in response to JPMorgan’s lobbyist

Broadridge told news media that it made the unprecedented change in the middle of this ongoing and unresolved shareholder vote because it was asked to do so by the Securities Industry and Financial Markets Association (“SIFMA”), a lobbying group.⁵ SIFMA represents JPMorgan as well as other banks and brokerage firms.

The Chief Executive Officer of SIFMA until February 23, 2013 was T. Timothy Ryan who is now Global Head of Regulatory Strategy and Policy for JPMorgan. Ryan joined SIFMA in 2008 from JPMorgan where he was Vice Chairman of Investment Banking for Financial Institutions and Governments. JPMorgan has refused to comment on whether or not Mr. Ryan has discussed the proxy vote tally issue with SIFMA.⁶

Mr. Ryan reports to the co-Chief Operating Officer of JPMorgan who, in turn, reports to the bank’s Chief Executive Officer and Chairman, Jamie Dimon. The proposal at issue here, of course, would impact Mr. Dimon personally by signaling strong shareholder support for ending Mr. Dimon’s role as Board Chairman.

⁴ Louis Brandeis, Other People’s Money and How the Bankers Use It (1914).

⁵ Susanne Craig and Jessica Silver-Greenberg, Shareholders Denied Access to JPMorgan Vote Results, N.Y. Times, May 15, 2013.

⁶ Brian Browdie, JPM Exec’s SIFMA Ties Could Help Dimon Vote, Amer. Banker, May 16, 2013.

NYSE Proposal needs closer scrutiny

The NYSE Proposal is viewed very favorably by both the brokerage industry, which includes firms like JPMorgan, and by Broadridge itself. However, the NYSE Proposal has been subject to severe criticism by a variety of investor groups and advocates.

We believe the Commission should examine closely the following questions and issues:

- Did JPMorgan and, in particular, Mr. Ryan, exercise improper pressure on SIFMA and/or Broadridge to alter longstanding past practice with respect to vote tally disclosure?
- Did JPMorgan and, in particular, Mr. Ryan, use the NYSE proposal, which alters the way that Broadridge is compensated, as leverage to secure Broadridge's agreement to stop vote tally disclosure?
- Did JPMorgan use its position on the Proxy Fee Advisory Committee ("PFAC") of the NYSE improperly to support changes to the fee structure or to influence the behavior of SIFMA and/or Broadridge with respect to vote tally disclosure? We note that investors, other than a major mutual fund, are not represented on the PFAC and were not included in a recent meeting attended by senior representatives of the SEC staff and PFAC to discuss the NYSE Proposal.⁷
- Does the proposed fee structure improperly encourage the adoption of internet-based voting procedures such as EBIP that shift control of the voting process to brokers and corporate managers? In this regard, we call attention to the fact that only recently and only under SEC pressure did Broadridge remove the one-click for all management proposals button on its proxyvote.com site.⁸
- Will the new rules insure proper oversight by the SEC of the preparation of voting instruction forms that are clear, informative and balanced? We call your attention to the discussion of this issue in the comment letter of the Council of Institutional Investors dated as of April 5, 2013.

⁷ Michael Bradley, Memorandum, Re: Meeting with Representatives of NYSE and its Proxy Fee Advisory Committee, May 7, 2013.

⁸ Ross Kerber, [Proxy sites dump one-click vote button SEC concerns](#), Reuters, Mar. 20, 2013.

- Will the new rules enable the creation of open rather than just proprietary “client directed voting” (“CDV”) systems? Open CDV systems encourage the participation of retail shareholders in the voting process by enabling them to learn from the voting tallies of institutional investors. This helps balance the resources available to retail investors relative to management. In this regard we direct your attention to the letter of Mark Latham of VoterMedia.Org dated as of September 29, 2010 commenting on the SEC’s Concept Release on the U.S. Proxy System. Mr. Latham served on the Investor Advisory Committee of the SEC representing retail investors.
- Should the fee structure used by Broadridge be subject to an independent audit prior to its reform?
- Should a more accountable structure, other than the current “Independent Steering Committee,” be developed to guarantee the independence of firms such as Broadridge that provide so-called “proxy plumbing” services such as vote tallies? It would be useful, for example, to explore whether the Independent Steering Committee was consulted in advance by Broadridge management on both the vote tally issue and on any contact that may have occurred between Broadridge and JPMorgan, including Mr. Ryan.
- Should mechanisms to create competition with the monopoly Broadridge be introduced so that all constituencies in the proxy process are better served?

In light of these serious and unresolved questions, we believe the Commission should institute proceedings, including public hearings, to investigate fully the process by which the NYSE Proposal emerged as well as its impact on the robust exercise of the shareholder franchise through the proxy mechanism. Please contact me at (202) 721-6027 if you have any questions.

Sincerely,


Dieter Waizenegger
Executive Director