Report of the OBO/NOBO Working Group to the Staff of the U.S. Securities and Exchange Commission

August 31, 2021
Washington, D.C.

Table of Contents

OBO/NOBO Working Group
Summary of Meetings and Discussions

Introduction

In the summer and fall of 2019, the staff of the U.S. Securities and Exchange Commission (SEC or Commission) encouraged the formation of industry working groups to discuss and evaluate reforms to the U.S. proxy system. One of these working groups is the OBO/NOBO Working Group.

The members of the Working Group[1] include the following individuals:

Jim Allen, CFA Institute
Thomas Apostolico, Director of Issuer Solutions, Mediant Communications
Ken Bertsch, Former Executive Director, Council of Institutional Investors
Steve Bochner, Partner, Wilson Sonsini
Cindi Boudreau, Computershare
Marty Burns, Chief Industry Operations Officer, Investment Company Institute
Chuck Callan, Broadridge Financial Solutions
Paul Conn, Computershare
Larry Conover, Vice President, Operations and Services Group, Fidelity Investments
Claire Corney, Computershare
Arthur Crozier, Chairman, Innisfree M&A Incorporated
Karen Danielson, Shareowner Services Manager, The Coca-Cola Company
Peter Davidson, Resolute Investment Managers
Beth Dell, Federated Hermes, Inc.
Lara Donaldson, Chief Operations Officer, TSX Trust
Dorothy Donohue, Deputy General Counsel, Investment Company Institute
Jim Duffy, Mediant Communications
Mario Esposito, Raymond James
George Gilbert, The Vanguard Group
Bruce Goldfarb, President and Chief Executive Officer, Okapi Partners
Sachin Goyal, J.P. Morgan
Christopher Greggs, Raymond James
Billy Hawkins, Dimensional Fund Advisers
Niels Holch, Partner, Holch & Erickson LLP
Joanne Kane, Senior Director, Investment Company Institute
David Katz, Partner, Wachtell, Lipton, Rosen & Katz
Patrick Krull, Northern Trust
Joe LaVara, Pershing LLC
Alexander Lebow, Co-Founder, Say Technologies

[1] Documented through email communications received from the staff of the Division of Corporation Finance, U.S. Securities and Exchange Commission.

John Lopinto, Client Success Enablement Executive, Mediant Communications
Jean Luther, Mediant Communications
George Magera, Deputy General Counsel, Federated Hermes, Inc.
Michael Marino, Credit Suisse
Mark Matala, Pershing LLC
Tim McHale, Capital Group
Tom Nadar, Executive Vice President, AST Fund Solutions
Terri McKinney, Resolute Investment Managers
Paul Mickle, BlackRock
Nino Palermo, Capital Group
Charles (Chip) Passfield, Broadridge Financial Solutions
Russell Pixton, Goldman Sachs
Thomas Price, Managing Director, SIFMA
Brandon Rees, Deputy Director, Corporations and Capital Markets, AFL-CIO
Kurt Schacht, CFA Institute
Robert Schifellite, President, Investor Communication Solutions, Broadridge Financial Solutions
Christopher Scotto, DTCC
Tony Seiffert, Capital Group
Katie Sevcik, Chief Operating Officer, EQ Shareowner Services
Eileen Storz-Salino, Eaton Vance
Darla Stuckey, President and Chief Executive Officer, Society for Corporate Governance
Joseph Swanson, Northern Trust
Paul Torre, President, Governance, Proxy & Ownership Services, AST
Patrick Vergara, Say Technologies
Christina Young, Charles Schwab

Katie Sevcik agreed to serve as Chair of the Working Group. Since its first meeting on December 4, 2019, this Group has held 13 subsequent meetings and calls.[2] A number of the later sessions involved presentations by public company issuers, fund issuers, institutional investors, broker-dealers, proxy service providers (transfer agents, tabulators, proxy solicitors, and others), and Broadridge.

At an earlier session in January 2020, the Working Group members received a PowerPoint presentation on the Canadian proxy system. A copy of that PowerPoint presentation is provided as an attachment to this report. *See* Exhibit #1.

[2] After the initial meeting, the Working Group met on January 8 and February 18, 2020. Meetings were suspended during the initial phase of the COVID-19 public health emergency. The Working Group resumed its discussions in July 2020 with a series of Zoom calls on July 22, September 2, September 23, November 11, December 2, and December 16, 2020. Calls resumed in 2021 on January 6, February 3, March 3, April 14, and May 26, 2021.

What follows is a high-level description of the current OBO/NOBO framework, followed by a summary of the discussions by members of the Working Group. This report also contains several exhibits provided by Working Group members and referenced in this summary.

Background and History

Ownership of shares in a public company or an investment company include voting rights. State corporation law, which regulates most corporate governance matters, provides that only the shareholder of record of a public company or an investment company has the right to vote on corporate matters, as the "legal" owner of the company's shares. Since the substantial majority of shareholders do not attend shareholder meetings in person, these shareholders vote by proxy. This proxy process is regulated by the Commission.

Under current SEC rules, public and investment companies can communicate directly with their registered shareholders.[3] Registered shareholders appear on each company's stock ledger or master security holder file. Companies are permitted to disseminate proxy statements to their registered shareholders directly and these shareholders receive a proxy card for voting their shares. Registered shareholders return their proxy cards back to the official tabulator for the election, and, if they so choose, can use their legal proxy to attend a shareholder meeting in person.

The remaining shareholders hold their shares with a broker or bank in "street name," where they are classified as the underlying beneficial owners of the shares and not the shareholders of record.[4]

Under the street name system, legal title and ownership of individual public company shares reside with a depository institution, such as the Depository Trust Company (DTC) or the Canadian Depository for Securities (CDS). The street name system was established to improve the efficiency of securities trading by eliminating the need to transfer paper stock certificates. Under this system, stock certificates are immobilized and cancelled, with the corresponding shares held in electronic form on the books of the issuer registered to a nominee of the depository created for this purpose. Stock transfers are handled through an electronic book-entry process, in which transfers are recorded among financial intermediaries.

For investors who hold their shares in street name, the proxy process works differently than the process for registered shareholders. Public and investment companies distribute proxy materials and otherwise communicate with these shareholders through the brokers and banks that

[3] For public companies, shares held by registered shareholders comprise about 20-25% of their shareholder base and for investment companies, shares held by registered shareholders comprise approximately 15-20% of their shareholder base. *See, e.g., infra* note 4. In this paper, any references to "companies" includes both public companies and investment companies.

[4] The SEC has estimated that 70-80% of all public company shares in the United States are in street or nominee name. Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42,982, at 42,999 (July 22, 2010) (citing Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, at 10-11, June 5, 2006).

hold their shares in nominee form. Broker-dealers and banks may utilize a service provider to facilitate the distribution of various communications and proxy materials, and to collect voting instructions. One service provider, Broadridge Financial Solutions (Broadridge), acts as the agent of most of the more than 1,000 brokers and banks transacting in securities and handles much of the work for them in proxy distribution activities and shareholder vote processing.[5] Broadridge provides technologies and processing services to its broker-dealer and bank clients on a fee-for-service basis through arm's length negotiations with their broker-dealer clients. Broker-dealers and banks are entitled to reimbursement of their reasonable direct and indirect expenses associated with their obligations to forward communications to their customers based on a regulated fee schedule developed and approved by the national securities exchanges and the SEC.[6]

Street name shareholders—also called beneficial owners—receive proxy materials and voting instruction forms—called VIFs—and return voting instructions to Broadridge or another proxy service provider for each shareholder meeting. A beneficial owner interested in attending and voting at a shareholder meeting in person must secure a legal proxy from the broker or bank holding his or her shares. Application Program Interfaces (APIs) provide another means for beneficial owners to attend and vote at virtual meetings when the communications are serviced by one proxy service provider while the meeting platform is provided by another firm. Generally, a beneficial owner wanting to attend the shareholder meeting in person without voting will need to show proof of ownership.[7]

Under SEC rules adopted in the mid-1980's, brokers and banks are required to classify beneficial owners as either Non-Objecting Beneficial Owners (NOBOs) or Objecting Beneficial Owners (OBOs), which designation is generally based on indications by investors at the time they open a brokerage or trading account.[8]

Under this framework, public companies and registered investment companies are currently permitted to: (1) obtain a list of NOBOs (with name, address, and share amount) after paying a regulated fee; and (2) mail certain corporate communications, such as an annual report, directly to them. However, a list of NOBOs may not be used for the distribution of proxy materials. With respect to OBOs, names and contact information may not be disclosed to a company for any purpose whatsoever.

---

[5] A small percentage of broker-dealers and banks do use other agents for proxy communications and voting services.
[6] Broadridge's fee-for-service model is not regulated by the SEC.
[7] Many companies permit guests to attend their virtual meetings online.
[8] The NOBO/OBO classification system was established in 1983, as a part of the shareholder communications framework recommended by the 1982 SEC Advisory Committee on Shareholder Communications. *See* Facilitating Shareholder Communications Provisions, 48 Fed. Reg. 35,082 (Aug. 3, 1983). Exchange Act Rule 14a-13(b)(5) enables an issuer to obtain a list of its NOBOs only, which means that broker-dealers and banks must classify their beneficial owners as either objecting beneficial owners (OBOs) or non-objecting beneficial owners (NOBOs), based on an investor's decision.

Public Company Perspectives

The structure of the current proxy processing system has been in place for more than 35 years and it has been a source of frustration for public companies seeking to improve engagement and direct communications with their beneficial owners.

Corporate issuers would like to be able to have an ongoing dialogue with their long-term investors, in part because they have annual shareholder meetings and report earnings on a quarterly basis. Regulators and other capital market participants are also encouraging more frequent contact between companies and their investors for transparency and corporate governance purposes.

While the NOBO/OBO system does provide shareholders a simplified privacy choice, many retail shareholders do not understand the framework. Individual investors wonder why a company they have invested in cannot look them up on the company's stock ledger. And a significant portion of a company's owners are not in direct communication with the companies in which they are invested.

Public companies question the policy rationale behind preventing issuers from being able to know who their shareholders are. Instead, corporate issuers should have access to name, preferred contact information, and share position for all their beneficial owners and should be permitted to communicate with them directly. In fact, certain types of corporate actions, such as the payment of dividends, require beneficial owner information, and this is typically provided to the exchange agent from the broker and bank custodian for both OBOs and NOBOs.

Corporate issuers agree that communications with beneficial owners should only be for purposes involving the corporate or business affairs of a company. Federal privacy regulations (and perhaps other restrictions and penalties unique to this process) should apply to the use of beneficial owner information received from a broker or bank.[9]

Public companies also would like the option to choose their own service providers when distributing proxy materials and disseminating other communications to their shareholders. Under the current system, companies have no choice in selecting a proxy service provider; they exert little to no control over the services that are actually provided; and they have no ability to negotiate fees with the service provider. While the current system does allow companies to communicate with all their shareholders through intermediaries, they believe the cost is higher than it should be. As one example, companies would like to be able to send email communications directly to their beneficial owners at a minimal cost.

[9] Current SEC regulations permit the disclosure of information: (a) "necessary to effect, administer, or enforce a transaction that a customer requests or authorizes"; and (b) "as permitted by law." *See* 17 C.F.R. § 248.14(a), 17 C.F.R. § 248.14(b)(2), and 17 C.F.R. § 248.15(a)(7)(i). Similar privacy provisions apply to banks.

Companies are frustrated that they cannot reach their NOBO investors for proxy purposes and SEC rules limit the use of a NOBO list to annual reports and similar corporate communications.[10] NOBO investors have already made a choice regarding the disclosure of personal information for shareholder communications purposes.[11] At the very least, there is no reason why companies should be restricted from obtaining a list of their NOBOs, sending them proxy materials directly, and letting them vote directly with the tabulator.[12] Additionally, there are NOBOs who have consented to electronic delivery of proxy materials, but an issuer cannot contact them by email without the involvement of brokers and banks.[13]

Public company representatives believe that the process for classifying investors as OBOs or NOBOs when a brokerage account is opened (or after) is not uniform within the brokerage industry. Public companies also believe that there should be a periodic review of NOBO/OBO status, so investors can have an opportunity to reconsider their NOBO/OBO status over time and not just at account opening.

Both public company and investment company representatives on the Working Group believe that the SEC or its staff should remind brokerage firms to review their account opening processes to assure that clients opening new accounts on a going-forward basis are informed prominently that they may choose to receive regulatory communications directly from issuers (including funds). As a starting point, public company and investment company representatives on the Working Group prepared the attached document to provide sample language that would facilitate investor understanding by using a uniform and consistent process at account openings in the future. *See* Exhibit #2.

More investor education also needs to be a part of any proxy reform measures, so shareholders understand their rights and responsibilities when owning shares of public companies. It is important that investors make an informed choice about whether to be a NOBO or an OBO. And companies believe that brokerage industry procedures should ensure that NOBO status is the default, *i.e.*, only if an investor affirmatively objects to disclosure of this information should he or she classified as an OBO.[14]

Public companies believe that investor privacy interests can be protected by developing a more nuanced view of communications preferences, instead of the binary choice of NOBO vs. OBO. Using technology currently available, individual investor preferences regarding the

---

[10] *See, e.g.*, 17 C.F.R. § 240.4a-13(b)(4) and (c).
[11] Currently, the shareholder information disclosed is name, postal address, share amount, and, in some instances, email address.
[12] *See, e.g.*, Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Ms. Vanessa Countryman, Acting Secretary, U.S. Securities and Exchange Commission (Apr. 8, 2019), *available at* https://www.sec.gov/comments/4-725/4725-5406665-184492.pdf.
[13] Based on SEC rules, a NOBO list provides names, street addresses, and the number of shares owned. Email addresses are not required to be provided under the current regulations. One proxy service provider, Mediant, does provide known email addresses when a NOBO list is requested.
[14] *See infra* footnote 41.

method of contact for corporate communications could be determined and followed. And investor preferences should be collected in a more robust manner. For example, a NOBO may want to be contacted by email only and not by telephone. Similarly, an OBO may authorize limited issuer contact on certain corporate developments outside of the proxy process.

Public companies are also willing to abide by "guardrails" in the use of beneficial owner information. For example, existing privacy regulations could apply, along with special regulatory restrictions and penalties to prevent any misuse of the information.

Registered Investment Company Perspectives

Registered investment companies, including mutual funds, closed-end funds, and exchange traded funds, or ETFs, may participate in the proxy voting process in their dual roles as issuers and institutional investors.

Funds as Issuers

Mutual funds and ETFs have different shareholder communication requirements than corporate issuers. The SEC requires these funds to transmit prospectuses and annual and semi-annual reports to shareholders on an ongoing basis, and shareholder meetings are held periodically and not necessarily on an annual basis.

Mutual funds and ETFs hold periodic shareholder meetings for a number of reasons, including to elect directors and to seek shareholder approval of fund mergers and changes in a fund's investment adviser. Self-regulatory organizations require listed closed-end funds to have annual shareholder meetings. The SEC requires closed-end funds to transmit shareholder reports twice annually.[15]

All types of funds experience great difficulty achieving quorums for shareholder meetings. More than 90% of fund shares are held in retail accounts and it is challenging to secure individual investors' votes.[16] Unlike operating companies, funds often do not have large blocks of institutional investors upon whom they can depend to vote.

Funds have difficulty even reaching their shareholders. Fund shareholders invest largely through broker-dealers and other intermediaries, and their shares are held by the fund in omnibus accounts in the intermediaries' names. Further, the OBO/NOBO system limits the ability of funds to contact their beneficial owners. Funds may not contact directly their OBOs and, while SEC rules govern when a fund may obtain a list of its NOBOs, these NOBO lists may be

[15] This paper uses the term "fund" or "funds" to include mutual funds, ETFs, and closed-end funds and generally focuses on providing the perspectives of funds as issuers.
[16] For additional detail see Investment Company Institute, Analysis of Fund Proxy Campaigns: 2012-2019 (Dec. 2019), *available at* https://www.ici.org/pdf/32123a.pdf.

obtained only at a high cost, and lack sufficient identifying information for funds to send materials to NOBOs directly.[17]

The Investment Company Institute (ICI), on behalf of the fund industry, urges the SEC to take concrete steps to further reform the OBO/NOBO system. The SEC should consider two possible regulatory solutions that would permit funds to deliver proxy and other regulatory materials to shareholders, using a vendor of their choosing. Both of these recommendations would open up service provider competition and lower costs for funds and their shareholders.[18]

First, the SEC can make clear that Section 14 rules under the Securities Exchange Act of 1934 permit funds to choose how to deliver fund regulatory materials and require intermediaries to provide on request to funds or their selected agent (*i.e.*, vendor) a data file with only the shareholder information necessary for delivering these materials. Under this solution, vendors could seek reimbursement from funds for reasonable expenses incurred.

Second, the SEC could allow funds to choose how to deliver fund regulatory materials by not applying the OBO/NOBO distinction for the purpose of distributing fund regulatory materials. This would allow funds to select their own vendor, negotiate a competitive price on behalf of fund shareholders, and then request a data file from the intermediary and provide it to the fund's selected vendor.

Funds believe there is a misalignment of incentives in the current system. Brokerage firms can choose their own service providers, but no one else can. This has resulted in higher costs to shareholders. In 2018, ICI gathered data from its members to compare the amount that funds pay in processing fees for shareholder report delivery per intermediary-held account against the amount per direct-held account.[19] For direct-held accounts, the survey found that half of reporting funds (or the median fund)[20] pay 5 cents or less per report. ICI's survey showed that the differences in processing fees between beneficial and direct accounts are significant. A beneficial owner pays three times more in processing fees for mailing a shareholder report than a direct account and pays five times more in processing fees for emailing the shareholder report.[21]

---

[17] *See* Letter to Vanessa Countryman, Acting Secretary, Securities and Exchange Commission, from Paul Schott Stevens, President and CEO, Investment Company Institute (June 11, 2019), *available at* https://www.ici.org/system/files/attachments/pdf/19_ltr_fundproxy.pdf.

[18] *See, e.g.*, Letter from Susan Olson, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, regarding *SEC Request for Comments on the Processing Fees Charged by Intermediaries for Distributing Materials Other Than Proxy Materials to Fund Investors* (Oct. 31, 2018), *available at* https://www.ici.org/pdf/18_ici_processing_fees_ltr.pdf.

[19] *See id*.

[20] Median represents the midpoint of a distribution. In ICI's survey, median means that half of direct accounts pay 5 cents or less to receive a shareholder report and half of direct accounts pay more than 5 cents. ICI's survey median of 5 cents included funds that reported zero processing fees for their direct accounts. Some fund complexes handle delivery of fund materials or the creation of mail files in-house and do not charge a discrete processing fee to the funds. If the funds that reported zero processing fees are omitted, the survey median rises to 6.4 cents and is still well below the rates beneficial accounts pay under the NYSE schedule.

[21] *See* Letter from Susan Olson, *supra* footnote 18.

In October 2018, Broadridge submitted a comment letter to the SEC that included an economic analysis by Compass Lexecon. The Compass Lexecon analysis found that total unit costs for delivery to beneficial accounts were lower than total unit costs for delivery to direct accounts, reflecting the higher rate of suppressed paper reports in beneficial accounts than in direct accounts.

In a January 2019 comment letter, the ICI explained that the Compass Lexecon analysis did not specifically address processing fees as those costs were bundled into the total cost calculation. By doing so, Compass Lexecon's analysis obscured the higher processing fees charged to beneficial accounts as compared to direct accounts.[22] Additionally, the Compass Lexecon analysis cites the cost to prepare small print jobs as an expense factor. While small jobs, on average, may cost slightly more than large jobs, funds with small jobs can negotiate significantly better rates than those referenced in the Compass Lexecon analysis.

In response to the Compass Lexecon analysis, ICI contacted two members to obtain a quote based on their existing pre-negotiated contracts to prepare a mailing for 150 positions covering the tasks outlined in footnote 40 of Compass Lexecon's analysis.[23] One member received a quote for $77.95 and another member received a quote for $125—significantly less than the average $335.92 cited in Compass Lexecon's analysis. This provides another example of funds' ability to negotiate a lower rate when they choose the vendor and negotiate the price.

Finally, a review of information from Compass Lexecon's analysis shows that direct accounts serviced by Broadridge are charged less (approximately $0.1218) than would be assessed under the NYSE processing fee schedule for beneficial accounts with the same characteristics (approximately $0.1819). ICI believes its own survey data and Compass Lexecon's analysis unequivocally demonstrate that reforming the NYSE fee schedule can meaningfully lower the cost of delivering mutual fund shareholder materials and increase the cost savings achieved by digital delivery (including e-delivery).

As described more fully below, Regulation S-P restricts funds' use of shareholder personal data in a manner that protects the privacy interests of those shareholders.

In order to fulfill their regulatory obligations today, funds—including transfer agents that maintain all shareholder records—receive confidential shareholder information, *i.e.*, non-public personal information (NPPI), on shareholders from broker-dealers and other distributors of their shares. The funds' regulatory obligations include, for example, complying with Investment Company Act of 1940 Rule 22c-2 and state blue sky laws.

---

[22] *See* Letter to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, from Shelly Antoniewicz and Joanne Kane, Investment Company Institute, (Jan. 17, 2019), *available at* https://www.ici.org/system/files/attachments/pdf/18_ici_nysefees_ltr.pdf.

[23] Necessary tasks will vary by print job and whether mailing involves the use of an envelope or the shareholder's name and address is applied directly onto a self-mailing piece. Applicable tasks may include programming shareholder names and addresses into the printer, sealing a self-mailing piece, inserting a shareholder report into an envelope, and sealing the mail package.

Since 2000, SEC Regulation S-P has imposed upon all SEC registrants—including funds, fund distributors, fund transfer agents, and broker-dealers—a duty to protect the confidentiality of any NPPI they receive.[24] It also limits registrants' sharing of such information. Regulation S-P permits broker-dealers to share shareholder NPPI with unaffiliated third parties, including funds, as necessary to service the shareholders' accounts and fulfill the funds' regulatory obligations. This means that funds *must* maintain the confidentiality of any NPPI they receive from a broker-dealer to protect shareholders' privacy interests. Further, funds may not use the NPPI for any purpose other than servicing shareholder accounts and fulfilling the funds' regulatory obligations.

The fund industry takes very seriously its obligation to protect the confidentiality and integrity of shareholders' NPPI against *any* type of threat—including cybersecurity threats. ICI members spend hundreds of millions of dollars annually to maintain, and further strengthen, their cyber defenses to protect all non-public information, including non-public shareholder information.

Intermediaries already share beneficial owner identity, account registration details, and transaction information with funds through various electronic platforms, including the National Securities Clearing Corporation (NSCC) Omni/SERV[25] and Networking services. These communications platforms provide a streamlined and cost-efficient process for intermediaries to share with funds underlying beneficial owner information and create transparency within omnibus relationships. This is accomplished electronically, in a secure environment facilitated by the NSCC. The Depository Trust & Clearing Corporation (DTCC) and the NSCC each is designated as a Systemically Important Financial Market Utility (SIFMU) and must adhere to strict and comprehensive risk management protocols among other requirements.

Funds as Investors

Preserving the confidentiality of fund trading information is an issue of great importance to funds because premature or improper disclosure of this information can allow another market participant to front run a fund's trades, adversely impacting the price of the stock that the fund is buying or selling. Similarly, it is important for a fund to protect the confidentiality of how it might vote on a particular issue in advance of casting that vote. Funds believe that the confidentiality of this information can be maintained by using a nominee account and therefore confidentiality is not a valid justification for maintaining the OBO/NOBO system. A nominee account permits a shareholder to enter into an agreement that transfers the shareholder's securities into the name of the broker-dealer.

[24] *See* Regulation S-P, 17 C.F.R. Part 248.

[25] Omni/SERV is a standardized file-based solution through which intermediaries communicate the underlying beneficial owner information within an omnibus position to the fund (*e.g.*, a mutual fund's beneficial owner positions, account details, and related transactions). The standardized files are passed from the intermediary to the fund company through the secure network of the Depository Trust & Clearing Corporation (DTCC).

Institutional Investor Perspectives

Privacy is an important issue for many institutional investors, as these investors generally seek to keep their holdings and trading strategies confidential, outside of any SEC Form 13F filings. Some institutional investors, such as pension funds and other investment managers, are also resistant to being solicited directly by public companies, dissident shareholders, and their proxy solicitors, as they prefer to control the communications they have concerning the companies in which they are invested. It is estimated that 72% of institutional investors currently classify themselves as OBOs for these reasons.

Many institutional investors employ active management strategies for their equity portfolios. They prefer to maintain their OBO status to protect their proprietary trading strategies and to prevent front-running of their trades. Under the present system, the confidentiality of an OBO's portfolio holdings is maintained by the broker or bank with which the OBO investor has a contractual relationship. OBO investors fear that the risk of disclosure of their proprietary trading information will grow exponentially if their holdings are made available to companies and dissidents. For example, dissident investors, such as hedge fund activists, have a legal right to access a company's NOBO shareholder list for proxy solicitation purposes.

Institutional investors also have concerns about how changes to the OBO/NOBO system may impact proxy voting. Many beneficial owners delegate proxy voting responsibility to their asset managers or a proxy advisory firm. These proxy voters typically vote their proxies through Broadridge's centralized voting platform (ProxyEdge) and are generally opposed to any change to this voting system or to their OBO status. Some institutional investors are sensitive to any changes to the system that would increase their costs by, for example, fragmenting the process for proxy voting by institutional investors through competing proxy voting systems.

OBO status also provides a measure of proxy voting confidentiality for institutional investors. While the proxy voting records of mutual funds are disclosed in public SEC filings, these disclosures are made after the shareholder meeting has concluded. In addition, other registered investment advisers, family offices, and pension plans do not typically disclose their voting records.[26] In the absence of a uniform confidential voting rule, some institutional investors may prefer to maintain their OBO status to avoid receiving proxy solicitations urging them to change their votes. They are also concerned that the elimination of their OBO status may result in additional telephone calls and emails from proxy solicitors that do not provide meaningful new information.

In a discussion among Working Group members, several institutional investors expressed concerns with the general decline in retail investor voting, largely due to the use of the Notice

[26] One or more state pension plans do disclose their holdings periodically, pursuant to specific state laws.

and Access format.[27] These investors were supportive of improvements to the proxy system that would facilitate issuer and investor communications with NOBOs for proxy purposes (such as making available telephone numbers and email addresses for consenting NOBOs), as long as OBOs can maintain their right to be anonymous.

Concerns were also expressed about maintaining retail investor choice in the electronic dissemination of shareholder communications. According to several institutional investors, retail investors should be able to "opt-in" to electronic communications, as is currently the rule for public company communications, instead of being forced to "opt out" of electronic distribution.

Brokerage Industry Perspectives

The Securities Industry and Financial Markets Association (SIFMA) and the brokerage industry do not necessarily agree with the perspectives and views expressed in other sections of this Report. Specifically, SIFMA does not agree to the inclusion of Exhibit #2 (Sample NOBO/OBO Disclosure Document) with this Report because the brokerage community did not participate in the creation of this document nor its applicability to their clients.

Members of SIFMA have had and continue to have a strong interest in ensuring that the shareholder communications and voting system continues to operate in a reliable, efficient, and credible manner that serves the interests of their clients. Members also have an interest in ensuring that important interests of their clients receive adequate protection, including the privacy rights of shareholders regarding the confidentiality of their personal information and trading decisions.[28]

The brokerage community believes the current proxy system is working efficiently and without significant problems. Importantly, the brokerage community believes that to maintain an efficient and resilient proxy system, an evaluation of the current proxy system should adhere to the strong principles of continuing to encourage greater retail engagement and participation in a cost-effective manner. Investors value their relationship with their broker-dealers and trust them to protect their privacy rights.

For broker-dealers, the primary issue here is one of respecting the privacy rights of individual and institutional investors. Investors have a strong interest in the protection of their non-public personal information (NPPI) and in deciding whether their names, addresses, and share ownership position can be provided to third parties. Information held by broker-dealers and other financial institutions is protected by powerful federal privacy laws, particularly

[27] These concerns were expressed with respect to public companies. Registered investment companies rely significantly less frequently on notice and access for delivery of proxy materials as compared to public companies.
[28] *See* SIFMA Proxy Working Group, *Report on the Shareholder Communications Process with Street Name Holders, and the NOBO-OBO Mechanism* (June 10, 2010), *available at* https://www.sifma.org/wp-content/uploads/2017/05/report-by-the-sifma-proxy-working-group-on-the-shareholder-communications-process-with-street-name-holders-and-nobo-obo-mechanism.pdf.

Regulation S-P and the Gramm Leach Bliley Act (GLBA), and these protections do not extend to non-financial issuers.

Not all investors want to share their identity and contact information outside of their brokerage relationships, and the brokerage community believes that their ranks are likely only growing. The general societal interest in privacy and data security has expanded significantly since the 1980's—and today is a common topic of front-page news, and a consistent focus of Congress and regulatory agencies, including the SEC. Financial privacy is one of the most critical elements, and it plays also into collateral concerns about cybersecurity and identity theft. It therefore comes as no surprise that the privacy interest of retail investors in their names, addresses, and trading histories has significantly increased since the 1980's.

It is the experience of broker-dealers that clients who are contacted by issuers or their solicitors are more likely to switch to OBO status. Additionally, the majority of institutional investors strongly value their privacy, as is evident with the high percentage of OBO status (approximately 75%) within this population, and these institutional investors do not want to see changes for retail shareholders to impact their ability to remain an OBO. The brokerage community does not believe that there should be any changes to existing rules to expand the availability of their personal information without first surveying retail investors.

Broker-dealers also believe in investor choice, *i.e.*, that the decision about what personal information should be shared with public companies should be left up to each investor. According to SIFMA, the NOBO classification is the default classification, and an investor should be classified as an OBO only after making an affirmative objection to any information sharing.[29]

Broker-dealers agree that the disclosure and use of client personally identifiable information should continue to be based on an individual investor's choice. Most OBOs may have chosen that classification for good reason. The average share position attributed to individual OBOs is significantly higher than those held by individual NOBOs.[30] A shareholder who holds a more sizable position in an issuer's securities is more likely to be contacted by an issuer or its solicitor—absent the privacy protections permitted under current rules. OBO shareholders wish to control when they engage with issuers on matters of importance to them and want to avoid repeated contact on matters that may not be of interest. For example, when frequent contacts are made with NOBO investors to solicit their vote during a proxy contest, broker-dealers have observed that these investors often switch their status to OBO.

A third issue expressed by broker-dealers involves concerns that some participants have a misunderstanding about requirements of the OBO/NOBO classification and dispute such data and the default status. As previously noted, broker-dealers are required to categorize clients as

[29] *Id*. at 4.
[30] Based on information Broadridge provided to SIFMA and shared with the Working Group.

NOBOs by default, unless they have affirmatively asked to be OBOs.[31] Current industry data indicates that the substantial majority of retail investors (76%) are classified as NOBOs and the substantial majority of institutional investors (72%) are classified as OBOs. The high level of retail NOBO accounts can likely be attributed to the default standard.

SEC rules promulgated in 1983 permit broker-dealers to ascertain the preferences of their customers without paperwork and in a flexible manner that reflects the relationship between broker-dealers and their customers. In the SEC's adopting release to the rule in 1983, they established a non-objection standard that requires each customer of a broker-dealer to affirmatively object to the disclosure of his or her name and address. However, banks were subject to stricter privacy laws that required a customer to affirmatively consent to having his or her information released. Updated legislation and rules allowed the SEC to change the affirmative consent requirement going forward for new bank customers, making NOBO the default designation for both bank and broker-dealer clients.

Generally, broker-dealers do not support disclosure of additional information, such as telephone numbers and email addresses, or more complex preference management. Telephone numbers are not always public and email consent requirements are often specific to the entity collecting the data. Broker-dealer clients guard their privacy rights regarding sharing email addresses to avoid spam and other unsolicited communications. The vast majority of clients' existing consents to their brokers for use of email addresses apply to communications that brokers control or forward on behalf of issuers, and do not allow for the sharing of such email addresses with 3rd parties. In addition, requiring broker-dealers to manage enhanced preferences, such as specific reasons for disclosure of certain information, is not a core function and would require significant and expensive costs for technology enhancements. Any modifications to the current system should not compromise the security of a brokerage firm's proprietary or confidential information, such as its information on client affiliations.

Several Working Group members highlighted the fact that, in the modern era of communications, customers of almost every business are being asked for a wide range of preferences, such as how a company can stay in contact and for what purpose. The issue of preferences has become more complex and refined since the NOBO/OBO classification system was established. If broker-dealers are to be responsible for ascertaining preferences outside of the NOBO/OBO framework, then costs will need to be accounted for and determinations made about who will pay for it.

Broker-dealers are concerned about liability exposure if sensitive information is exchanged with a third party and a data breach occurs. Concerns were also expressed about the use of data by issuers outside of the proxy process and whether existing privacy regulations would apply. Broker-dealers do not believe their customers want them to freely share their personal and nonpublic data outside of their brokerage relationships. Non-financial public

[31] *See infra* footnote 41.

issuers are not "financial institutions" and accordingly, are neither recognized nor regulated by the GLBA (nor generally by any other privacy law) as repositories of customers' personal data. Nor is the categorical sharing of such information with thousands of issuers and their agents consistent with the design of the GLBA, nor is it contemplated by existing exceptions.

A fourth concern expressed by broker-dealers involves communications and use of information. Brokers are adamant about servicing the communication needs of their clients to ensure efficiency, reliability, and credibility. Brokers provide a consistent and secure platform for communication from trusted partners and some brokers offer to their customers the convenience of receiving information and voting their proxies through brokerage websites. The brokerage community has also made significant investments in technologies for electronic communications to our accounts, including "mobile-first" designs for proxy and interim communications, interactive statements, notifications through apps, broker mailboxes, etc. Broker-dealers, along with other industry participants, are committed to investments to drive further innovation in communications technologies and cost savings on paper and postage to issuers, funds, and shareholders.

In the Working Group discussion on this topic, several broker-dealers expressed their view that if NOBO lists are to be provided more broadly, they should be used for proxy purposes only and not for collecting information on brokerage customers. Brokers are opposed to a model where issuers would use NOBO lists to send brokers' Voting Instruction Forms (VIFs).

Broadridge has indicated that the vast majority of current NOBO list requests are not used for communication purposes, but more likely by issuers and agents to monitor ownership. Broadridge also provides a service that segments the NOBO list for issuers. It can create subsets for targeting both NOBO and OBO investors in a cost-effective manner, to encourage them to vote their proxies.

Broker-dealers believe that the proxy system works well today, based on the absence of complaints from their client account holders to the SEC, FINRA, or the brokers themselves. They note that public companies can communicate efficiently and securely with all their shareholders, including their street name investors. Any approach that provides issuers with the primary role of maintaining beneficial owner accounts would undermine the system of street name ownership necessary for the efficient and reliable functioning of our securities markets. The current infrastructure sends emails on the same day, or within 24 hours, and physical mail generally within 2 business days. Proxy materials sent by mail has declined to 19% as of 2020 as a result of technologies for householding, e-delivery, and managed account consolidation.[32]

[32] *See Broadridge 2020 Proxy Season Key Statistics and Performance Rating*.

Further, interims sent by mail have declined to 27%.[33] Such mechanism are saving issuers and funds over $1.8 billion annually on printing and postage.[34]

Additionally, more broker-dealers are finding that their customers like the convenience of voting proxies through a brokerage website. As a trusted partner and with a consistent format and approach to receiving regulated communications and proxy materials, SIFMA members believe this increases engagement and has resulted in an increase in voting results for the issuer community. The current system allows an issuer to reach all its investors, whether they are classified as NOBOs or OBOs in a consistent format.

Finally, a fifth topic expressed by broker-dealers involves education. Broker-dealers are supportive of efforts to continue educating shareholders and all market participants. They also believe that the industry will be able to continue to save costs associated with communications and create a more transparent market. Significant cost savings have been realized over the years by increasing the number of investors who decide to convert to receiving these materials electronically and can access them through their broker platforms. Continued investment in technology and other mechanisms for shareholder engagement will continue to reduce costs. Much if not most of the cost of delivering required communications to shareholders results from behind-the-scenes activities such as the technology and operations that support beneficial ownership.

Education needs to be a part of any proxy reform measure, so that broker-dealers are given the opportunity to operate in a fair and transparent market and investors are given an informed choice about whether to be a NOBO or an OBO. However, SIFMA members believe most investors understand the implications of the NOBO/OBO decision and are educated about their choice to share their personal information. While SIFMA members support continual education, they do not support a periodic review of the NOBO/OBO consent with customers. Investor choices on privacy are not made in a vacuum and existing rules and practices allow investors to change their preference at any point.

A re-examination of the current system should be implemented with a view to preserving the levels of security, reliability, and efficiency of the system, and also clearly hear the voice of the actual shareholder.

To supplement the presentation by broker-dealers on these topics, SIFMA provided the Working Group with a letter, dated February 3, 2021, containing additional comments. This letter is provided at the end of this report. *See* Exhibit #3.

---

[33] Based on information Broadridge provided to the Working Group and on file with the SEC. *See* Letter from Charles V. Callan, SVP Regulatory Affairs, Broadridge, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, at 13 (Jan. 4, 2021), *available at* https://www.sec.gov/comments/s7-09-20/s70920-8204380-227517.pdf.

[34] *See id*.

Proxy Service Provider Perspectives[35]

Privacy concerns should be balanced with the corporate governance needs of public companies and funds. The current proxy process is not as effective as it needs to be. And there are questions why SEC policies are preventing an issuer from knowing who their shareholders are and being able to communicate with them, along with reasonable investor privacy protections.

Corporate actions are executed each trading day (*e.g.*, dividends) and current technology allows all service providers to work more productively and in a more cost-effective manner than in the past.

Several proxy service providers believe that the most pragmatic path forward is to work within the NOBO/OBO system and allow issuers, as a first step, to have the ability to send proxy materials and communicate directly with NOBOs in an efficient and cost-effective manner. The issue of whether the NOBO/OBO classification system should exist at all should be an agenda item for the Long-Term Proxy Reform Working Group.

A number of proxy service providers observed that the current NOBO list is inadequate for use by issuers in its current form. The list does not include all shareholders, as OBOs are excluded. Additionally, the list does not contain enough information about how to contact individual shareholders. For example, the NOBO list often does not contain email addresses or telephone numbers for shareholders.[36]

One proposal offered by a service provider would require a full shareholder list to be provided to issuers, upon request. The list would only disclose share positions adjacent to each broker-dealer's name. Each investor would oversee his or her preferences and could decide how much contact information is disclosed. For existing NOBO accounts, the shareholder's name, address, telephone number, email address, and share position would be disclosed. Existing OBO accounts would share nothing more than the share position and broker-dealer's firm name, and all personal information would remain private. The new enhanced version of OBO-NOBO data would now be provided at the preference of the shareholder, and he or she would indicate a choice to independently share each or any of the following personal information: (1) his or her name, (2) address, (3) phone number (mobile and/or landline), and (4) email address, each being a separate data sharing option.

---

[35] The perspectives in this section reflect the views of transfer agents, tabulators, proxy solicitors, and other service providers to issuers in this Working Group. The views in this section do not reflect the views of Broadridge. Broadridge's views are presented in the next section.

[36] Currently, one of the broker-dealer agents, Mediant, provides known email addresses in a NOBO list. Mediant's position is that this makes sense in today's increasingly digital world—if a NOBO has declared that they wish to be communicated with electronically, issuers should be able to accommodate them. The other broker-dealer agent, Broadridge, does not disclose known email addresses in a NOBO list. The position of Broadridge's broker-dealer clients is that this information has not been authorized by NOBOs to be provided to an issuer.

The NOBO list should also be shared in electronic form with issuers. A secure portal should be developed for access to the list. This process could mirror how omnibus proxy reports are provided to issuers through the Depository Trust Company, *i.e.*, through an exchange of information involving parties that have been pre-authorized and verified.

Another proxy service provider observed that the NOBO/OBO system is not likely to be repealed in the next several years, largely because a number of institutional investors want to retain their anonymity and OBO status for various purposes. However, if public companies are able to distribute proxy materials to their shareholders who are NOBOs, it would permit more competition among proxy service providers.[37]

This provider also noted that his company believes that each party gaining a benefit in the proxy system should pay for it. Thus, issuers should pay to obtain the NOBO list and distribute proxy materials to these beneficial owners. Likewise, institutional investors and broker-dealers should pay for the costs—including proxy distribution expenses—of maintaining anonymity in the street name system.

It was also noted during this presentation that global trends are moving towards more transparency in shareholder identity and holdings.[38] For example, the September 2020 implementation of the Shareholder Rights Directive II in Europe has provided EU-incorporated issuers enhanced rights to require disclosure of their beneficial owners.

Broadridge Perspectives

Over several Working Group sessions, Broadridge officials presented data on the current NOBO/OBO framework. Highlights of their presentations were as follows:

- Broadridge processes 5,000-6,000 requests annually for NOBO lists. Based on the indications public companies make when they request a list, 76% of the recent lists were used for information purposes and not for mailing purposes. Public companies and their agents typically use NOBO lists for monitoring ownership. Many of the lists are requested on a monthly or quarterly basis to gain insight into who is buying or selling shares. In contrast, when a fund company requests a NOBO list it is typically in conjunction with a shareholder meeting. Broadridge makes NOBO lists available (1) electronically through ICSOnline, its secure portal for issuers, solicitors,

[37] *See, e.g.*, Letter from Paul Conn, President, Global Capital Markets, Computershare Limited, to Ms. Vanessa Countryman, Acting Secretary, Securities and Exchange Commission (Apr. 12, 2019), *available at* https://www.sec.gov/comments/4-725/4725-5356425-184067.pdf.

[38] For a review of transparency rules, shareholder communications, and proxy processes in 14 international markets, see Computershare, Transparency of Share Ownership, Shareholder Communications and Voting in Capital Markets (March 2015), *available at* https://www.computershare.com/News/TransparencyofShareOwnershipShareholderCommunicationsandVotinginglobalcapitalmarkets_12032014_GCM.pdf.

banks, and brokers; (2) in a PDF sent by email; or (3) in paper form as a convenience to the entities that request it by mail.

- Issuers, fund companies, and other soliciting persons can send communications to beneficial shareholders without requesting a NOBO list. In 2020, there were 1,929 distribution events ("jobs") where issuers sent non-proxy, interim communications to some or all shareholders. They can communicate with subsets of shareholders based on, for example, a range of shares owned, voting frequency, zip codes, and delivery preferences, among other variables.

- Issuers and fund companies can communicate efficiently to shareholders regardless of their classification as NOBOs and OBOs. In most cases, issuers can reach 80% of their shares by communicating with fewer than 20% of their shareholders.[39] For example, for an issuer with 100,000 shareholders, the all-in cost to reach the 20,000 shareholders holding 80% of the shares would be $5,800.[40] Digital communications are sent within 24 hours, and many on a same-day basis.

Broadridge also provided the Working Group with data for the Group's discussion of processing fees and the cost of communications to direct-held and street accounts.

- In 2018, Broadridge commissioned Compass Lexecon to analyze the comparative costs of communications for direct-held accounts and accounts held in street name. The study looked at the total unit costs of mutual fund "interim" communications, including paper, postage, and fees. Compass Lexecon concluded that the unit cost for direct-held accounts was at least 25% greater than it was for accounts held beneficially in street name. Increases in digital delivery since 2018 have further reduced the unit cost of communicating with accounts held in street name.

- Broadridge noted that 4,160 of the mutual fund company "jobs" it processed on behalf of bank and broker-dealer clients (or 44% of all jobs processed in 2018) were for smaller funds with fewer than 5,000 accounts each. On average, these funds paid total fees of just $251 for sending shareholder reports.

- Broadridge noted that the regulated fees for communications with accounts held in street name are known and fully disclosed. By contrast, unregulated fees for smaller jobs can include minimums, job set-up fees, material insertion fees, inventory management fees, expediting fees, and other charges that substantially increase the processing fees paid by smaller funds in communicating to direct-held accounts.

[39] It was noted by Broadridge that virtually all of the largest shareholders, typically institutional investors, receive communications digitally.

[40] The breakdown of this $5,800 estimate is as follows: 18,000 digital deliveries at $0.25 each = $4,500; 2,000 mailed deliveries at $0.15 each = $300; and $1,000 for paper and postage (for the 2,000 mailed deliveries at $0.50 each).

- A 2018 survey by ICI indicated an average processing fee of $0.11 for direct-held accounts (although the survey focused on the lower "median" fee). ICI noted that 25% of survey respondents were in-house transfer agents that do not charge their funds processing fees—these respondents reported paying $0 in processing fees. When this set of responses is eliminated, the average processing fee paid for direct-held accounts appears to be closer to $0.15.

    - ICI's survey omitted cost data for jobs with fewer than 100 shareholders. By way of perspective, Broadridge processed a total of 915 jobs in 2018 with less than 100 shareholders each. This segment comprised approximately 10% of all mutual fund jobs that Broadridge processed for funds held in street name. In comparison to the "one-size-fits-all" nature of the NYSE regulated fees for broker-dealers, these funds would have incurred substantially higher fees in an *unregulated* environment.

- Shareholder Reports: Broadridge provided an update on the cost savings resulting from its investments in technology and processing with, and on behalf of, banks, broker-dealers, fund companies, and corporate issuers. In 2020, 73% of the shareholder reports and annual prospectuses that Broadridge processed were digital for investors holding funds in street name (inclusive of householding, e-delivery, and account consolidations). By contrast, the proportion of digital communications is less than half that for shares held directly, based on a 2018 survey by the Investment Company Institute.

    - Broadridge estimated that fund companies saved over $605 million in 2020 on paper and postage for shareholder reports and annual prospectuses. This estimate is net of preference management fees authorized in the NYSE fee schedule.

    - Broadridge estimated that fund companies will save over $115 million on paper and postage in 2021 from their reliance on SEC Rule 30e-3 for sending shareholder reports to accounts held in street name. This savings estimate is net of the incremental fee for Notice & Access delivery authorized in the NYSE fee schedule.

- Proxies: Issuers and fund companies are realizing significant and growing annual savings on printing and mailing costs, net of fees. In the 2020 proxy season, 81% of the proxy positions that Broadridge processed were digital.

Broadridge also provided a briefing to Working Group members on the workings of the Canadian proxy process:

- National Instrument 54-101 was adopted in 2002, with a goal of having equal treatment for beneficial and registered shareholders. The first phase permitted issuers to have access to NOBO lists for non-proxy purposes. The second stage was implemented in 2004 and it permitted issuers to use NOBO lists to solicit proxy votes.

- NI 54-101 unintentionally resulted in a bifurcated system that is complex and inefficient.

- Broadridge noted several Canadian market trends:

    - In 2020, after 16 years under National Instrument 54-101, only 7% of beneficial shareholders were sent proxy voting forms by transfer agents.
    - The Canadian system is different from the proxy system in the U.S. Quorum requirements are generally low and they are often set by company by-laws.

- Several lessons learned from the Canadian system based on comments by Broadridge:

    - Broadridge has made significant technology investments in Canada to increase efficiency.

    - Broadridge recently rolled out a service for electronic communications in contested solicitations.

    - Over the years, many Canadian investors have changed their classification from NOBO to OBO:
        - In 2002, 80% of beneficial owners were NOBOs and only 20% of beneficial owners were OBOs.
        - More recently, only 44% of beneficial owners are NOBOs and 56% of beneficial owners are OBOs.

    - Broadridge indicated that under Canada's privacy laws and National Policy 11-201, the use of email addresses by any entity (including by Broadridge) requires investor consent.

    - Broadridge indicated that there are mechanisms to capture and utilize consents, including through ProxyVote.com (its electronic communication and voting platform) and InvestorDelivery.com. When Broadridge processes a proxy distribution, it runs the records through its proprietary databases to evidence valid consents to electronic delivery, and it then sends the proxy information digitally.

- Broadridge indicated that the fees for processing communications to beneficial shareholders are public. When an issuer purchases a NOBO list to mail to NOBO investors, they pay a fee of $0.16 for every beneficial account at "early search" and $0.20 per beneficial account at "record date search."

- Broadridge noted that when Broadridge performs a proxy distribution, there is a comprehensive fee of $1 per beneficial account for data aggregation, distribution, and vote tabulation. Canadian regulators set the $1 fee in 1987 and it has not changed since then.

- National Instrument 54-101 is silent on who pays for communications to OBOs. When issuers do not pay for delivery to OBOs, they must disclose it in their Information Circular. However, most Canadian issuers elect to pay for OBO mailing costs.

Areas of Common Agreement

Working Group members are in agreement on two broad concepts: (1) investors should be educated about the NOBO/OBO classification system and the importance of voting at shareholder meetings; and (2) investors should be able to choose whether or not they want their contact information disclosed to the companies in which they are invested.

Areas of agreement also include the following:

- All Working Group participants agree that retail investors should be educated about how their name and contact information may be shared with an issuer for any investor choosing or defaulting to NOBO status. Additionally, there was agreement that NOBO status should continue to be a non-objection standard and the default for classification purposes, as required by the SEC.[41]

- All Working Group members recognize that there are other important areas of the proxy system requiring reform, outside of the current OBO/NOBO framework that the Long-Term Proxy Working Group should undertake. For example, proxy campaigns pose unique challenges for registered funds, based on their largely retail shareholder bases and the relatively low proxy participation rates of retail

[41] *See, e.g.*, Facilitating Shareholder Communications Provisions, 45 Fed. Reg. 35,082, at 35,085 (Aug. 3, 1983) ("The Commission has adopted a non-objection standard for disclosure of the beneficial owner information. The Commission believes that such a standard best facilitates shareholder communications by encouraging the greatest participation of shareholders whose securities are held in nominee name. At the same time, the Commission believes that privacy concerns are adequately addressed by giving beneficial owners an opportunity to object to disclosure.").

shareholders. Compounding the difficulties for fund proxy campaigns are Investment Company Act and rule provisions that require funds to obtain a quorum of greater than 50 percent to approve certain specified items, including changes to fundamental investment policies, investment advisory and distribution agreements, and mergers of affiliated funds. Proposals to merge affiliated funds may produce cost savings for the affected shareholders, yet this high minimum quorum requirement increases the costs of related proxy campaigns, and, in some cases, causes fund sponsors and boards to avoid these proposed mergers altogether.[42] SEC action on these recommendations would significantly reduce the costs of fund proxy campaigns and improve their overall efficiency.

- The brokerage community, public company, and fund industry representatives agree that electronic delivery of proxy and other materials should be made the default means of communicating with investors, subject to appropriate investor protections, including allowing investors to "opt in" to paper delivery at any time. Making electronic delivery the default option for investor materials offers flexibility that will enhance the effectiveness of investor communications, will reduce the environmental impact of discarded paper mailings, and potentially will reduce costs for all parties. Working Group participants acknowledge that further consideration may need to be given to the potential implications of default electronic delivery under the E-SIGN Act of 2000.

- Finally, Working Group members agree that there should be more, not less, voting by retail investors in the proxy process. Similarly, the SEC and/or the Long-Term Proxy Working Group should evaluate proposals that could lead to greater retail shareholder engagement and participation in shareholder meetings.

Conclusion

The OBO/NOBO Working Group submits this report for the Commission's consideration. We have reached agreement on several areas of great importance to the key participants in the proxy process. There is consensus on the need to further educate investors about the NOBO/OBO classification system. The Working Group is aligned, in principle, on the need to improve retail voting participation.

[42] ICI has offered several proxy recommendations to the SEC to address these fund-specific challenges. *See* Analysis of Fund Proxy Campaigns: 2012-2019 (December 2019), *supra* note 16; and Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Ms. Vanessa Countryman, Acting Secretary, Securities and Exchange Commission (June 11, 2019), *available at* https://www.ici.org/pdf/19_ltr_fundproxy.pdf. In addition, the SEC should consider working with the New York Stock Exchange to clarify that NYSE Rule 452 allows brokers to submit uninstructed shares (*i.e.*, broker non-votes) for quorum purposes in connection with any registered fund proxy campaign (such as a fund merger or liquidation that requires shareholder approval) that is not a contested proxy vote.

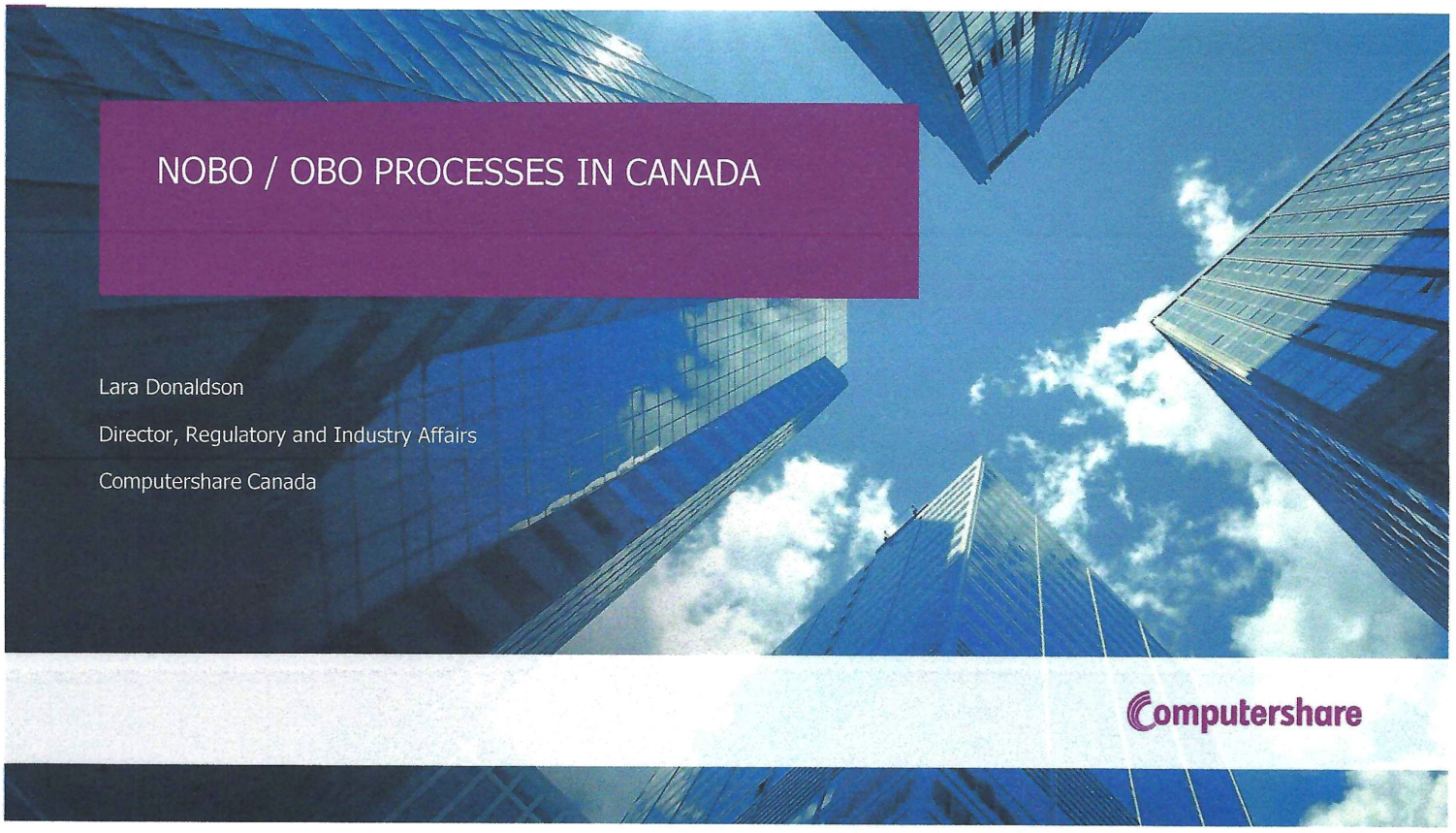
On other areas, despite multiple attempts over a protracted period, we regret to report that we could not achieve consensus on OBO/NOBO reforms.

As a result of these different points of view, we, therefore, present in this report the various perspectives of the key participants in the proxy process and urge the Commission to use this report as it conducts its own evaluation of the OBO/NOBO classification system.

Attachments: Exhibits #1, #2, and #3

Report of the OBO/NOBO Working Group

Exhibit #1



NOBO / OBO PROCESSES IN CANADA

Lara Donaldson

Director, Regulatory and Industry Affairs

Computershare Canada

Computershare

Agenda

- Background of Canadian regulations
- NI 54-101 – Purpose and Fundamental Principles
- Implementation of NI 54-101 and transition for Intermediaries
- NI 54-101 – Current processes
  - New accounts and Intermediary obligations
  - Search process
  - Delivery of NOBO list, allocation of voting rights, and voting process
- Learning Opportunities
  - Cost and timing of data
  - Reconciliation of NOBO accounts
  - Electronic delivery consent

Background

National Policy Statement 41

- NPS 41 – Approved in 1987; effective March 1, 1988
  - Set out framework for communications with beneficial shareholders
- Based on recommendations set out in *Report of the Joint Regulatory Task Force on Shareholder Communication* dated July, 1987
  - Ensure non-registered holders have the same access to corporate information and voting rights as registered shareholders;
  - Ensure that the obligations of each participant in the communications chain are equitable and clearly defined; and
  - Ensure that regulation and procedure is uniform nationwide.

Background

National Instrument 54-101

› National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*

- Replaced NPS41
- First published for comment February 27, 1998
- Revised versions published for comment July 17, 1998 and September 1, 2000
- Published June 14, 2002; came into force July 1, 2002
- Transitional period – NOBO lists were not required to be furnished before September 1, 2002. Issuers could not mail directly to NOBO holders until September 1, 2004.
- Amendments February 9, 2005; January 1, 2011; February 11, 2013.
- Includes Companion Policy – NI 54-101CP.

National Instrument 54-101

Purpose

"Establishes an obligation on reporting issuers to send proxy-related materials to the beneficial owners of its securities who are not registered holders of its securities, provides a procedure for the sending of proxy-related materials and other securityholder materials to beneficial owners and imposes obligations on various parties in the securityholder communication process." [1]

National Instrument 54-101

Fundamental Principles

- All securityholders of a reporting issuer, whether registered holders or beneficial owners, should have the opportunity to be treated alike as far as is practicable;
- Efficiency should be encouraged; and
- The obligations of each party in the securityholder communication process should be equitable and clearly defined. [2]

National Instrument 54-101

Implementation and Transition - Intermediaries

- Intermediaries could either:
  - Seek new instructions from account holders, or
  - Rely on instructions previously provided under NPS41
- Account holder could amend coding at any time.
- Coding applied to all securities held in the account.

National Instrument 54-101

New Accounts and Intermediary Obligations

- NI 54-101 F1 – *Explanation to Clients and Client Response Form*
- Sets out requirements for intermediaries opening new accounts, and client options:
  - NOBO / OBO
  - Material Type – A (All Material), S (Special Meetings only), D (Decline all material)
  - Language preference – English / French
  - Electronic Delivery consent

National Instrument 54-101

New Accounts and Intermediary Obligations - Required explanations

› NOBO/OBO Option:

- Difference between the NOBO / OBO coding and what it means to the client.
- OBO explanation must include disclosure of any fees or charges that the intermediary may require an OBO to pay in connection with the sending of securityholder material, including the fact that an OBO may not receive material unless they or the issuer bear the cost.

› Material Type – A, S, D

- Disclosure that despite a specific material type being selected, an issuer or other party can choose to mail material, provided they bear all costs associated with mailing.

National Instrument 54-101
Search Process

- NI 54-101 F2 – *Request for Beneficial Ownership Information*
- Sets out requirements for initiating a search for material distribution and/or requesting a NOBO list:

(a) In connection with neither a meeting nor the sending of securityholder material;

(b) For the purpose of obtaining a NOBO list, and in connection with sending securityholder materials, but not in connection with a meeting;

(c) For the purpose of obtaining a NOBO list, and in connection with a meeting;

(d) In connection with sending securityholder material, not in connection with a meeting, and without a NOBO list being requested; or

(e) In connection with a meeting, without a NOBO list being requested.

National Instrument 54-101

Undertaking

- NI 54-101 F9 – *Undertaking* (to be used by issuer when requesting a NOBO list)
  - Information set out in NOBO list can only be used in connection with matters relating to the affairs of the reporting issuer
  - Specifies that the NOBO list can only be used for the following situations, and any other usage is a contravention of the law:
    - Sending securityholder material directly to NOBOs;
    - An effort to influence the voting of securityholders of the reporting issuer;
    - An offer to acquire securities of the reporting issuer.
  - Cannot be used to mail material to NOBOs who have elected not to receive material, except as allowed for under NI 54-101

National Instrument 54-101

NI54-101 F9 – Undertaking

› Required disclosure to be included in the material being mailed:

"These securityholder materials are being sent to both registered and non-registered owners of the securities. If you are a non-registered owner, and the issuer or its agent has sent these materials directly to you, your name and address and information about your holdings of securities, have been obtained in accordance with applicable securities regulatory requirements from the intermediary holding on your behalf." [3]

National Instrument 54-101

Undertaking

- NI 54-101 F10 – *Undertaking* (to be used by a third party when requesting a NOBO list)

  - Specifies that the NOBO list can only be used for the following situations, and any other usage is a contravention of the law:
    - An effort to influence the voting of securityholders of the reporting issuer;
    - An offer to acquire securities of the reporting issuer.

National Instrument 54-101

Delivery of NOBO list

- Format requirements are set out in Form 54-101F5 – *Electronic Format for NOBO list*
- Accompanied by an Omnibus Proxy NI 54-101 F4 *Omnibus Proxy (Proximate Intermediaries)*
  - Reallocates voting rights from the intermediary to the named management appointee(s).
  - Specifies that the named management appointee(s) cannot vote any portion of a position unless instructions are received from the beneficial owner, in the form of a Voting Instruction Form (VIF).
  - Appendix to the document lists each intermediary their CUID, and the number of shares represented by the NOBO accounts

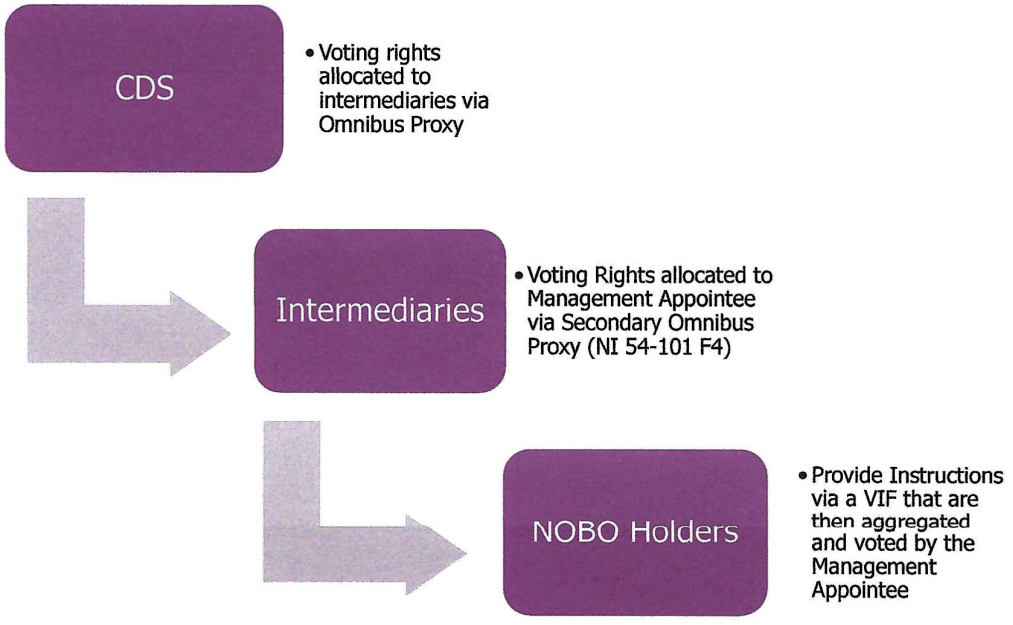
National Instrument 54-101

Voting Process

- Registered shareholders vote directly with tabulator using a proxy
- NOBOs vote directly with tabulator using a VIF
- OBOs vote via their intermediary or the intermediary's agent using a VIF and the tabulator receives an aggregated vote in the intermediary's name which is matched to the position on the Omnibus proxies received.

National Instrument 54-101

NOBO list – Allocation of voting rights



Computershare

National Instrument 54-101

Voting Instruction Form (VIF)

› NI 54-101F6 – *Request for Voting Instructions made by Reporting Issuer*

› Specific instructions regarding:

- Process for voting
- Instructions for appointing an alternate proxy
- How to attend the meeting and vote in person
- Details of proposals to be voted on
- Intermediary name, code, or identifier
- NOBO name, address and securities held
- Notice that a vote cannot be cast without instructions being received from the NOBO holder

Learning Opportunities

Cost and timing of data

› Fees stated in NI 54-101 are:

- Fee paid to intermediary by issuer for furnishing the information requested in a request for beneficial ownership information (i.e. the NOBO list).
- Fee paid to intermediary by issuer if issuer is mailing material indirectly to NOBOs (i.e. mailing through normal process).

› NI 54-101 states that any fee not prescribed by the regulator should be "...a reasonable amount". [4]

› Intermediary must send NOBO list and Omnibus proxy within three business days after record date.

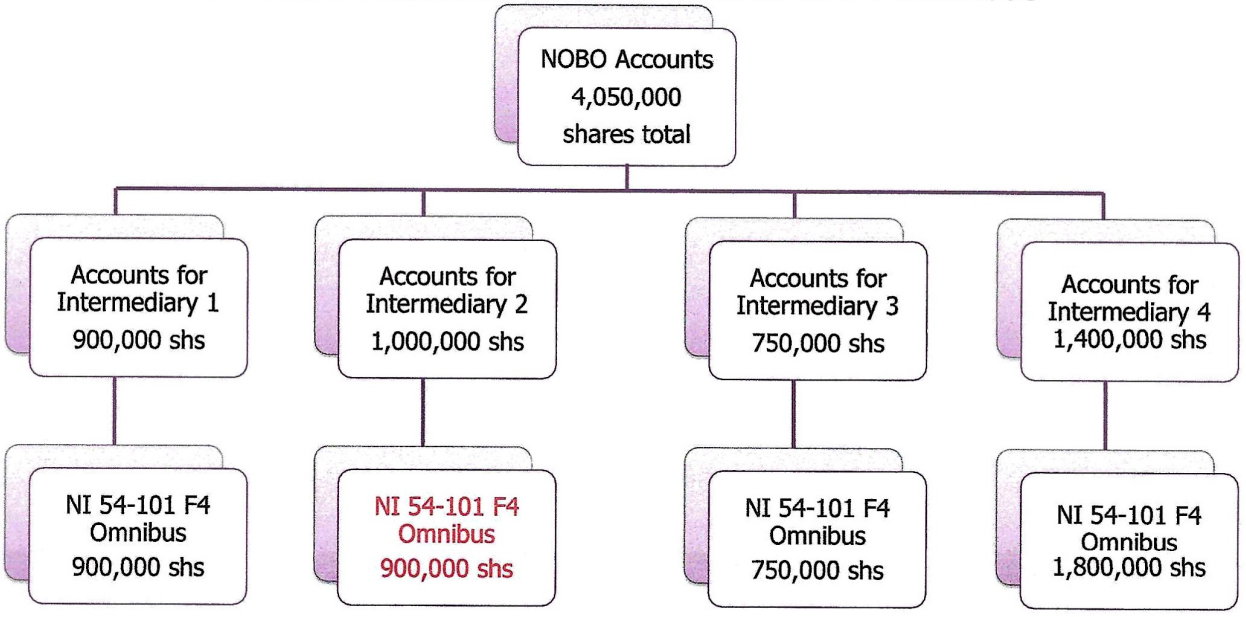
Learning Opportunities

Reconciliation of NOBO accounts

- NOBO accounts totals matched to NI 54-101 F4 Omnibus Proxy using CUID on the data file.
- CUID totals on NOBO file used to reduce the Intermediary position on the depository Omnibus proxy. Remaining balance is for tabulation of any OBO votes that are received
- Issues:
  - NOBO account totals out of balance with F4 Omnibus Proxy
  - Files with more shares allocated to NOBO records than available on the Depository Omnibus.
  - Files with OBO records, registered accounts, wrap or managed accounts, incomplete addresses.

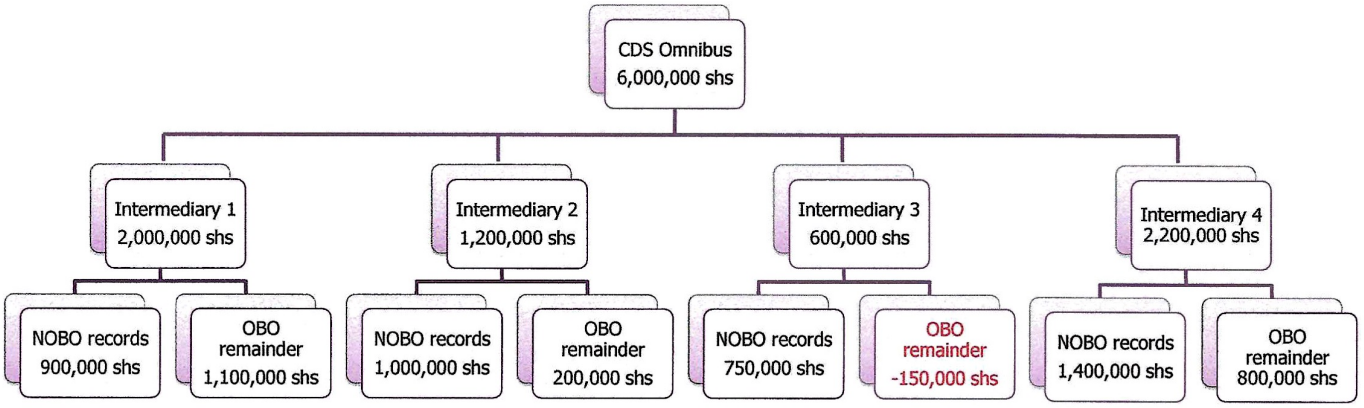
Learning Opportunities

Reconciliation of NOBO Accounts – NOBO records to F4 Omnibus



Learning Opportunities

Reconciliation of NOBO Accounts to Depository Omnibus Proxy



Learning Opportunities

Electronic delivery consent

- The beneficial holder consent for electronic delivery is to the intermediary
- The consent does not pass through to the issuer, therefore any email address on the data file cannot be used unless the issuer has obtained consent
- The data file does not contain an account number or unique identifier, so if consent is received, matching it back to a new file is very difficult.

References

- [1.] Notice of National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer And Companion Policy 54-101CP Communication With Beneficial Owners Of Securities Of A Reporting Issuer – April 5, 2002
- [2.] Section 1.2 - Companion Policy 54-101CP – Communication with Beneficial Owners of Securities of a Reporting Issuer
- [3.] Section 3, Form 54-101 F9 – National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer
- [4.] Section 2.6 – Companion Policy 54-101CP – Communication with Beneficial Owners of Securities of a Reporting Issuer

Contact Information:

Lara Donaldson
Director, Regulatory and Industry Affairs
Computershare Canada
Lara.Donaldson@Computershare.com
(416) 263-9546

Computershare

Report of the OBO/NOBO Working Group

Exhibit #2

DRAFT
7/20/2021

Account Opening and Periodic or Annual Disclosure Statement

Your broker may be purchasing shares of, or investing in, equities, mutual funds, ETFs, closed-end funds ("funds"), bonds, and other securities through your brokerage account.

The Securities and Exchange Commission (SEC) requires public companies and funds to provide their shareholders with important information, including proxy voting materials for shareholder meetings and other financial and performance information. This information appears in shareholder reports, proxy statements, and prospectuses.

You have the choice to receive this information directly from the companies or funds in which you are invested. Alternatively, you can receive this information from [name of brokerage firm].

Choosing to receive this shareholder information directly from public companies and funds will allow them to provide you with this important information directly and more cost-effectively, thereby saving money for you and other shareholders.

It is important for you to understand that SEC Regulation S-P prohibits any mutual fund, broker-dealer, or investment adviser from sharing any non-public personal information about you with any unaffiliated third-party unless specifically permitted by laws that were designed to protect your privacy interests. In addition, SEC Regulation S-AM prohibits these same firms from sharing information about you with their affiliates for marketing purposes unless they provide you with notice of such sharing *before* it occurs and lets you deny permission to share any of this information for that purpose.

Unless you affirmatively indicate otherwise, you may receive information directly from the companies and funds in which you are invested.

Report of the OBO/NOBO Working Group

Exhibit #3

sifma

Invested in America

February 3, 2021

Ms. Kathryn (Katie) Sevcik
Chief Operating Officer – EQ
EQ Shareowner Services
1110 Centre Pointe Curve, Suite 101
Mendota Heights, MN 55120

Re: SIFMA NOBO-OBO Designation Provisions to be Included in the NOBO-OBO Working Group Letter

Dear Ms. Sevcik:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide the provisions set forth below to the NOBO-OBO Working Group (the "Working Group") to be included into the Working Group's report

Our proposed provisions for the report are focused on the potential impacts that changes in the current NOBO-OBO designation rules and regulations would have on the broker-dealer community, our customers (shareholders) and the financial markets. As such, we set forth the following provisions to be included in the report:

* * *

SIFMA members have had and continue to have a strong interest in ensuring that the shareholder communications and voting system continues to operate in a reliable, efficient, and credible manner that serves the interest of their clients. Members also have an interest in ensuring that important interests of their clients receive adequate protection, including the privacy rights of shareholders regarding the confidentiality of their personal information and trading decisions.[2]

---

[1] SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See* SIFMA Proxy Working Group, *Report on the Shareholder Communications Process with Street Name Holders, and the NOBO-OBO Mechanism* (June 10, 2010), https://www.sifma.org/wp-

- Among the shareholder communication rules are the NOBO-OBO rules, which place limits on when issuers may obtain from brokers information about the beneficial holders of their shares.[3] A non-objecting beneficial owner ("NOBO") is a shareholder who has not objected to the disclosure of his or her name, address and share position. An objecting beneficial owner ("OBO") is a shareholder who has objected to such disclosure, preferring that only the broker or bank have his or her personal information. Brokers are required to categorize clients as NOBOs by default, unless they have affirmatively asked to be OBOs.[4]

- Investors have a strong interest in the protection of their non-public personal information and in deciding whether their names, addresses, and share ownership information can be provided to third parties. The primary issue here is one of respecting the privacy rights of individual and institutional investors. Not all investors want to share their identity and contact information outside of their brokerage relationships. Information held by brokers and other financial institutions is protected by powerful federal privacy laws, particularly Regulation S-P and the Gramm Leach Bliley Act ("GLBA"), and these protections do not extent to non-financial issuers. Not all investors want to share their identity and contact information outside of their brokerage relationships, and we believe that their ranks are likely only growing. The general societal interest in privacy and data security has expanded significantly since the 1980's – and today is a common topic of front-page news, and a consistent focus of Congress and regulatory agencies, including the SEC. Financial privacy is one of the most critical elements, and it plays also into collateral concerns about cybersecurity and identify theft. It therefore comes as no surprise that the privacy interest of retail investors in their names, addresses, and trading histories has significantly increased since the 1980s.

- Unlike brokers and other financial institutions, there generally are no federal, nor generally state, privacy laws that would protect personal investor information in the hands of a non-financial issuer and its agent.

- Brokers have a strong interest in protecting their clients' privacy interests and diligently safeguarding their clients' data, as well as a strong proprietary interest in their client affiliation information. Brokers are also adamant about servicing the communication needs of their clients in order to ensure that the process is efficient, reliable, and credible.

---

content/uploads/2017/05/report-by-the-sifma-proxy-working-group-on-the-shareholder-communications-process-with-street-name-holders-and-nobo-obo-mechanism.pdf.

[3] *See* Exchange Act Rules 14a-13, 14b-1, and 14b-2.

[4] *See* Facilitating Shareholder Communications Provisions, Release No. 34-20021 (July 28, 1983) [48 FR 35082] (the "1983 Release"). Exchange Act Rule 14a-13(b)(5) enables an issuer to obtain a list of its NOBOs only, which means that broker-dealers and banks must classify their beneficial owners as either objecting or non-objecting beneficial owners, based on the investor's election.

- To our knowledge, there is no widespread interest among retail investors to have information more freely shared with issuers, and as noted we believe many investors likely have a growing desire to avoid widespread sharing of their personal information. It is brokers' experience that clients who are contacted by issuers or their solicitors are more likely to switch to OBO status. We do not believe that there should be any changes to existing rules to expand the availability of their personal information without first surveying retail investors.

- Amending rules to provide further nonpublic personal information about broker clients to enable issuers to send proxy materials directly to shareholders may be inconsistent with the provisions of the GLBA. The GLBA provides that it is "the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' non-public personal information."[5] Consistent with this purpose, it is a fundamental assumption of the Act, and its regulatory scope and overall efficacy, that the personal investor information is held only by financial institutions, which is why the Act only covers financial institutions. If the SEC were to require financial institutions to share all customer information with issuers necessary to process proxy materials, it would undermine the Act's fundamental assumption that the client information is held only by financial institutions, and generally shared with third parties under narrowly-defined circumstances. Non-financial public issuers are not "financial institutions" and accordingly are neither recognized nor regulated by the GLBA (nor generally by any other privacy law) as repositories of customers' personal data. Nor is the categorical sharing of such information with thousands of issuers and their agents consistent with the design of the Act, nor is it contemplated by existing exceptions.

    - Other rules have also increased a broker's responsibility, such as Regulation BI, which covers clients' decisions among the types of accounts available. With enhanced focus and broker's responsibility, the SEC may wish to address a broker's responsibility when it believes that ether a NOBO or OBO status is in a client's particular interest.

    - For institutional investors, privacy is an important issue and they do not want to see retail investor changes undermine their overwhelming elections of OBO status. In most if not nearly all cases, issuers already know who their large institutional investors are, and have ongoing relationships with at least the larger investors. Based upon the large percentages of these types of accounts already electing OBO status, an argument can be made to have separate requirements for

[5] GLBA Section 501(a), 15 U.S.C. 6801(a). Under the SEC's definition in Section 3(t) of Regulation S-P of "personally identifiable information," a client's name and email address would be covered information.

different types of accounts, such as, for example, default institutional investors to OBO status.

- Brokers agree that the disclosure and use of client personally identifiable information ("PII") should continue to be based on an individual investor's choice.

    - Most OBOs may well have chosen that classification for good reason. The average share position attributed to individual OBOs is significantly higher than those held by individual NOBOs.[6] A shareholder who holds a more sizable position in an issuer's securities is more likely to be contacted by an issuer or its solicitor—absent the privacy protections permitted under current rules.

    - OBO shareholders wish to control when they engage with issuers on matters of importance to them and want to avoid repeated contact on matters that may not be on interest.

    - As noted above, when frequent contacts are made with NOBO investors to solicit their vote during a proxy contest, brokers have observed that these investors often switch their status to OBO.

- Congress and the Securities and Exchange Commission ("SEC" or "Commission") long ago struck a balance under Section 13(d) of the Exchange Act – and a 5% beneficial ownership threshold - to reflect when the public interest was sufficiently strong to outweigh investors' strong privacy interest in their personal information and share positions . By allowing investors to make a choice, the existing Nobo-OBO rues avoid both legal and practical inconsistencies with Section 13(d). Nonetheless, in adopting the NOBO-OBO approach in the 1980's, the Commission expressly acknowledged the need to balance the interests of issuers, brokers, and shareholders, taking into account investors' privacy interests, which today are reflected not only in Section 13(d) but also Regulation S-P and the GLBA.[7] Additionally, SEC Rule 13f-1[8] provides thresholds for reporting of investment managers with larger aggregated account holdings in equity securities.

    - Only significant shareholders that exceed the $100 million threshold of a class of equity securities listed on a national securities exchange (or otherwise registered

---

[6] *See* Broadridge's 2020 Proxy Season Key Statistics and Performance Rating at https://www.broadridge.com/_assets/pdf/broadridge-2020-proxy-season.pdf. Generally, the larger the account (as measured by the number of shares it holds), the more likely the shareholder is to object to sharing its name, address, and share amount information. For example, the 24% of retail accounts that are OBOs hold 37% of the shares of all retail investors as a group. Similarly, the 72% of institutional accounts that are OBOs hold 88% of the shares held by institutional investors as a group.

[7] *See* 1983 Release, supra, note 4.

[8] *See* SEC Rule 13f-1, https://www.law.cornell.edu/cfr/text/17/240.13f-1.

under Section 12 of the Exchange Act) would be required to make such disclosures. This balance reflects the significance both Congress and the SEC have long attributed to the privacy interests of investors in the U.S.

- We also believe there may be misunderstanding by some issuers about the NOBO rules, use, and data. Brokers are required to categorize clients as NOBOs by default, unless they have affirmatively asked to be OBOs and the data seems to support this (based on 2020 data).
    - In the SEC's adopting release to the rule in 1983, they established a "non-objection standard" that requires a broker's customer (shareholder) to affirmatively object to the disclosure of their name and address. However, banks were subject to stricter anti-privacy laws that required a customer to affirmatively consent to having their information released. Updated legislation and rules allowed the SEC to change the affirmative consent requirement going forward for new bank customers, making NOBO the default designation for both bank and broker clients.[9]
        - 76% of retail shareholders are NOBOs.
        - 28% of institutional shareholders are NOBOs.
    - Retail investors are largely NOBOs (a result of the default status). Brokers understand that privacy rights are critical for their clients that have selected to be OBOs.
    - As previously noted, institutional accounts proactively manage their preference with privacy concerns.
    - The information shared on a NOBO list can only be used by the issuer exclusively for the purposes of corporate communications. The release also urges issuers to notify brokers and make simultaneous distributions to OBOs to avoid communicating with only part of the shareholder base.
- We believe that most investors understand the implications of the NOBO-OBO decision and are educated about their choice to share or to not share their PII with issuers. Preferences are captured by brokers today via account agreements for all equity and fund investments held in each account, as well as by advisors and customer service representatives.

[9] *See* Broadridge's 2020 Proxy Season Key Statistics and Performance Rating at https://www.broadridge.com/_assets/pdf/broadridge-2020-proxy-season.pdf.

- While supporting any efforts for education, any new SEC rules or interpretations should avoid backing into effective "consent" requirements, particularly in response to suggestions for promptly displaying NOBO elections at account openings.[10]

    - The SEC was careful to not create a "consent" standard for clients to opt out of NOBO status, elaborating in their adopting release. Brokers communicate to customers in a number of ways, and each broker is best positioned to determine the most effective (and cost effective) method of communicating with their customers.[11]

    - New Requirements focusing on account opening will further confuse brokers obligations under all the other regulations and obligations required for disclosure to customers at account opening and repeated engagement.

    - Three has also been discussions from Issuers that perhaps preferences should be captured at the individual security level and not on an account level. We do not believe there is an investor desire to select privacy preferences based upon which securities they own, but rather their concerns are on the account level. Considering a switch to capture preferences on a security level will add to investor confusion as well as major complexity in infrastructure and costs to the process.

- With a larger percentage of NOBO retail accounts and recognizing that that OBO status already requires affirmative objection, it is unnecessary to change existing rules to require NOBO to be a default.

- The NYSE Proxy Working Group commissioned the 2006 "Investor Attitudes Study" to survey a relatively small group of 579 individual shareholders. According to those surveyed, 36% of shareholders indicated that they would prefer OBO status, and 64% said that they would elect NOBO status. Shareholders in the former group cited privacy concerns, a desire to avoid solicitations, and security/fraud issues. Importantly, this result is roughly consistent with the actual proportion of individual shareholders who have requested OBO status, which is 24%, and the disparity in the numbers suggests that the current system perhaps somewhat understates the total number of shareholders who would elect to be OBOs if asked again today, particularly given the growing societal interest in privacy and financial data security.

- Issuers should be encouraged to communicate with their shareholders, and SIFMA supports enhancements that would make such communications easier without impairing the integrity of the system or the interests of other participants. We believe, however, that issuers can already communicate efficiently and reliably with all of their shareholders, including street name holders. While issuers today have direct contact information for their registered shareholders, we believe that they generally do not use it

---

[10] *See* Facilitating Shareholder Communications Provisions, Release No. 34-20021 (July 28, 1983) [48 FR 35082].

[11] *See id.*

to contact registered holders "directly," but rather only indirectly and at a cost through transfer agents and other intermediaries.

- While some issuers have suggested that issuer be able to disseminate proxy materials and collect voting preferences using an agent of their choosing, we believe that such an approach would result in a confusing, uneconomic, and unreliable system for the dissemination of proxy materials and voting. In effect, that would require two separate systems to operate side-by-side. The first system would operate as it operates today for issuer that do not wish to disseminate proxy materials through their own agent. The second system would require issuers' agents to obtain investor contact information from broker's agent and reimburse the broker's agent for the service. The brokers agent would have to develop and operate new systems to segregate out positions that will be covered by the issuers' agents. The additional costs of such complexity would likely be born by issuers and their shareholders. Furthermore, the issuers and their agents may have different databases of consents for electronic delivery, so that the issuer's decision as to which approach to elect could result in significant differences to how the materials are delivered, whether electronically or in paper.

- The delivery of proxy and other required shareholder communications is just the tip of the iceberg in terms of operations and associated cost. Much if not most of the cost of delivering required communications to shareholders results from behind-the-scenes activities such as the technology and operations that support coordinating with brokers and banks and updating and processing beneficial ownership information, including for example share positions, consents to electronic delivery, consolidations for investment advisors or householding. It is unclear whether issuers' ability to choose different agents for delivery alone would result in any cost savings, and we strongly suspect that it would result in increased costs because brokers would still need to be reimbursed for their substantial on-going role in a new process.
-

Any approach that provided issuers with the primary role of maintaining beneficial ownership accounts would undermine the system of street-name ownership necessary for the efficient and reliable functioning of our securities markets.

- While issuers may elect to communicate directly with their retail shareholders, through the use of a NOBO list, the brokerage community believes that the current systems are reliable, efficient and a proven communication platform without significant problems. With existing requirements and guidance with the beneficial ownership process, the vast majority of regulated communications are electronic, significantly reducing costs to issuers. This same mechanism can be used for all types of communications.

    - The current infrastructure sends email same day, or within 24 hours and physical mail generally within 2 business days.

- Proxy materials sent by mail has declined to 19% as of 2020 as a result of technologies for householding, e-delivery, and managed account consolidation.[12]

- Interims sent by mail have declined to 28%.[13]

Such mechanisms are saving issuers and funds over $1.8 billion annually on printing and postage.[14]

- Issuers make a number of regulated communications to their shareholders today and can request that investors sign-up directly for additional communications where they can receive marketing, new product information and promotions, or other types of communications, at the investor's choice.

- Brokers provide tremendous value to their clients in consolidating holdings, creating efficiencies for trading, among other things, and maintaining a trusted and proven relationship with clients. Brokers are also adamant about servicing the communication needs of their clients in order to ensure efficiency, reliability, and credibility. Brokers provide a consistent and secure platform for communication from trusted partners and find that their customers prefer the convenience of receiving information and voting their proxies through brokerage websites. The brokerage community has also made significant investments in technologies for electronic communications to our accounts, including "Mobile-first" designs for Proxy and interim communications, interactive statements, notifications through apps, broker mailboxes, etc.

- Broker-dealers, along with other industry participants, are committed to investments to drive further innovation in communications technologies and cost savings on paper and postage to issuers, funds, and shareholders.

- The brokerage industry is concerned about data security and the liability of broker-dealers when sensitive information is exchanged with third parties and a data breach occurs. Concerns have also been expressed about the use of data by issuers outside of the proxy process, and whether existing privacy regulations would apply to such use.

- Mutual fund issuers have referenced similar processes, where some transaction related activity is shared by brokers with the fund companies for certain reporting obligations; however, the scope has limits and is under very strict limitations of use under Rule 22c-2(a)(2) and (b)(5), and which is documented in selling agreements.

---

[12] *See* Broadridge's 2020 Proxy Season Key Statistics and Performance Rating at https://www.broadridge.com/_assets/pdf/broadridge-2020-proxy-season.pdf.

[13] *See id.*

[14] *See id.*

- Standardized Data Reporting (SDR) is specific to certain requests for funds to monitor market-timing and frequency of trading, as well as to impose certain fees.

- A share-aging file allows funds to determine certain redemption and commission fees.

- Most brokers are contracted under level 3 networking arrangements where they maintain full control of customer accounts. In many cases various data is masked for privacy because it is not needed for monitoring obligations.

- Networking agreements between funds and brokers are embedded in each selling agreement and enforces the permitted use of client data shared with funds.

- Brokers do not support disclosure of additional information, such as telephone numbers and email addresses, or more complex preference management. Telephone numbers are not always public and email consent requirements are often specific to the entity collecting the data. Email addresses and telephone numbers are not presently an item of contact information required to be given to issuers for NOBOs under the SEC Proxy Rules. Our experience is that broker-dealer clients guard their privacy rights in regard to sharing email addresses to avoid spam and other unsolicited communications. Clients' existing consents for use of email addresses do not include communications by the issuer, given the existence of the separate NOBO-OBO process for issuer communications.

    - Requiring brokers to manage enhanced preferences, such as specific reasons for disclosure of certain information is not a core function and would require significant and expensive costs for technology enhancements. Any modifications to the current system should not compromise the security of a brokerage firm's proprietary or confidential information, such as its information on client affiliations.

- A re-examination of the current system should be implemented with a view to preserving high levels of security, reliability and efficiency. Among the efficiencies that the system should preserve is the savings that issuers have enjoyed.

* * *

We greatly appreciate the Working Group's consideration of including these provisions in the Letter and would be pleased to discuss these in greater detail. If you have any questions or need any additional information, please contact Thomas Price (212-313-1260 or tprice@sifma.org).

Sincerely,

Thomas F. Price
Managing Director
Operations, Technology, Cyber & BCP