



Via Hand Delivery

March 6, 2014

Keith F. Higgins
Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proxy Distributors

Dear Mr. Higgins:

I am writing on behalf of the Council of Institutional Investors (CII), an association of corporate, union, and public employee benefit plans, foundations, and endowments, with combined assets exceeding \$3 trillion.¹ As long-term investors with a significant investment in the U.S. markets, CII members share the U.S. Securities and Exchange Commission's expressed interest in ensuring the "U.S. proxy system as a whole operates with the accuracy, reliability, transparency, accountability, and integrity that shareholders and issuers should rightfully expect."²

Recent events have intensified CII's concerns over the arbitrary and biased disclosure of interim vote tallies and the role of proxy distributors in that process. CII urges the Division of Corporation Finance (Division) to issue interpretive guidance to ensure a level playing field for any participant in an active solicitation.³

As background, on May 17, 2013, we delivered to Chair White a letter detailing our concerns with a significant policy change by Broadridge Financial Solutions, Inc. (Broadridge), the dominant proxy materials distributor in the marketplace.⁴ Our letter was in response to Broadridge's abrupt decision to reverse a decades-old practice of providing interim vote tallies to shareowners engaged in exempt solicitations. Broadridge's decision—made without public input—raised deeply troubling questions about the fairness, impartiality and appropriate role of proxy distributors.

¹For more information about the Council of Institutional Investors (CII) and its members, please visit our website at www.cii.org.

² Concept Release on the U.S. Proxy System, Exchange Act Release No. 62,495, at 7 (July 14, 2010), <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

³The definition of active solicitation should not, in our view, be based on whether the sponsor of the initiative distributed solicitation materials to shareowners via Broadridge Financial Solutions, Inc. Instead, it should be defined to include any solicitation in which the sponsor engaged in written outreach to other shareowners, regardless of the mode of distribution. The definition should also include an exception for *de minimis* outreach.

⁴ Letter from Ann Yerger, Executive Director, to The Honorable Mary Jo White, Chairman (May 17, 2013) (on file with CII), available at http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_17_13_CII_Letter_Regarding_Proxy_Distributors.pdf.

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Our concerns have only grown with reports that Broadridge selectively distributed a memorandum that would have reversed its approach to providing interim voting results to parties engaged in non-exempt contested solicitations. Broadridge subsequently indicated that the memorandum had been issued in error and affirmed that it was making no changes to its longstanding practice. However, this most recent action—again seemingly without public input or regulatory oversight—is yet another example of how this lightly regulated enterprise apparently believes it has the authority to make-up the rules and selectively disclose sometimes critical, and arguably material, information to only certain favored participants in a solicitation.

As we noted last May, we believe Broadridge has obligations not simply to its specific clients—including brokers, companies and proponents—but also to the investing public. Since Broadridge has repeatedly been unable to operate in a manner that is fair to all interested parties, we believe it is time for the Division to intervene.

CII respectfully requests that the Division consider promptly pursuing one or more of the following actions:

- (1) Issue interpretive guidance clarifying the definition of “impartiality” under Rule 14a-2(a)(1). We believe that brokers and financial institutions are acting in more than a “ministerial” fashion, and thus are not acting with impartiality, when they or their agents selectively disclose voting information either during or after a solicitation. As a result, we believe the only impartial alternatives are to: (a) bar disclosure of interim voting tallies to everyone; (b) disclose the interim total number of shares voted, without any detail as to how those shares were voted, to any participant in an active solicitation upon request; or (c) provide interim vote tallies on ballot items to any participant in an active solicitation upon request.
- (2) Issue interpretive guidance clarifying that Rules 14b-1 and 14b-2 may not be relied upon to justify selective disclosure of interim vote tallies. Rules 14b-1 and 14b-2 are silent on the issue. It, however, is our understanding that proxy distributors may be relying on those rules to justify selective disclosure. As a result, we believe guidance clarifying the application of Rules 14b-1 and 14b-2 to interim vote tallies would be helpful.
- (3) Expand the reportable events on Form 8-K to require disclosure of interim vote tallies. We note that participants in active solicitations generally agree that the lack of access to interim vote tallies makes it “hard to know what kind of strategy to pursue and what kind of resources to invest.”⁵ Despite the importance of this information to those investors, the current instructions to Form 8-K only provide for disclosure of preliminary or final voting results.⁶ We believe interim vote tallies may represent material information to investors and should be required to be disclosed on Form 8-K.

⁵ Reuters, *SEC Asked to Review Shareholder Voting Rules Over JPMorgan Move*, Chi. Trib., May 17, 2013 (quoting Michael Garland, Assistant Comptroller for Environmental, Social and Governance at New York City Office of the Comptroller), available at http://articles.chicagotribune.com/2013-05-17/business/chi-shareholder-voting-jpmorgan-20130517_1_jamie-dimon-independent-chairman-london-whale.

⁶SEC Form 8-K, *Instruction 1 to Item 5.07*, at 19 (last visited Mar. 4, 2014), available at <http://www.sec.gov/about/forms/form8-k.pdf>.

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Of note, of the above three actions, CII's current preference is for the issuance of interpretative guidance that would be responsive to items 1(c) and (2), acknowledging that other actions might be too disruptive to the proxy voting process.

Thank you for your consideration of our concerns. If you have any questions regarding this letter, please contact me at directly at 202-261-7081 or jeff@cii.org.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeff Mahoney
General Counsel