Via Hand Delivery

May 22, 2014

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

Re: Follow-up from April 4, 2014 Meeting

Dear Mr. Higgins:

Thank you for meeting with us on April 4, 2014 to discuss three proxy related issues of great interest to the Council of Institutional Investors (CII) and that, in our view, warrant the prompt issuance of staff interpretative guidance or rulemaking by the U.S. Securities and Exchange Commission (SEC or Commission).

As you are aware, CII is 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 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]

[1]For 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.

1. Proxy distributors

As discussed at our meeting and as indicated in CII letters to the SEC of March 11, 2014,[3] March 6, 2014[4] and May 17, 2013,[5] CII believes the Commission should promptly take whatever steps are necessary to specify or clarify that the obligation of impartiality required by Rule 14a-2(a) extends to the disclosure of preliminary voting information. We believe that such action would assist in improving the level of investor confidence in the basic fairness and integrity of the proxy process. That confidence was shaken by Broadridge Financial Solutions, Inc. (Broadridge) in May 2013 when it abruptly reversed its long-standing practice of providing vote status information to shareowners engaged in exempt solicitations. That confidence was again shaken this past February, when Broadridge released a statement indicating another change in its long-standing reporting procedures for preliminary voting results, and then retracted the change indicating that the original communication was erroneous.

I understand the view expressed at the meeting that SEC rulemaking, rather than staff interpretative guidance, would be necessary to revise Rule 14a-2(a) consistent with our request. In that regard, we note that subsequent to our meeting, Broadridge released a memorandum on proxy vote reporting that included the following statement:

> If there is concern that the practice of providing interim voting information is inconsistent with . . . [acting impartially], Broadridge welcomes clarification from the SEC . . . *whether that be through interpretative guidance or rulemaking*.[6]

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[3] Letter from Jeff Mahoney, General Counsel, to Mr. Vikash Mohan, Program Analyst 13 (Mar. 11, 2014) ("We believe the prompt pursuit of one or more of our suggested actions would effectively resolve investor concerns surrounding interim vote tallies."), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_11_14_CII_letter_to_SEC_strategic_plan.pdf [hereinafter Mar. 11 Letter].

[4] Letter from Jeff Mahoney, General Counsel, to Keith F. Higgins, Director, Division of Corporation Finance 1 (Mar. 6, 2014) ("CII urges the Division of Corporation Finance (Division) to issue interpretative guidance to ensure a level playing field for any participant in an active solicitation."), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_06_14_CII_letter_SEC_proxy_distributors.pdf [hereinafter Mar. 6 Letter].

[5] Letter from Ann Yerger, Executive Director, to The Honorable Mary Jo White, Chairman 3 (May 17, 2013) ("CII urges the Commission . . . to prioritize an examination of the role, the oversight, and accountability of proxy distributors and the lack of impartiality in the proxy process."), http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_17_13_CII_Letter_Regarding_Proxy_Distributors.pdf.

[6] Proxy Vote Reporting and "Interim Vote Status Information" 5 (Apr. 2014) (on file with CII) (emphasis added).

As indicated in our meeting and as detailed in our letters, there is ample evidence indicating that many investors, including many CII members, are concerned that Broadridge's practice for providing interim voting information lacks impartiality.[7] We, therefore, respectfully request that the SEC respond to Broadridge's invitation and our repeated requests by promptly pursuing a limited scope amendment to Rule 14a-2(a).

In the meantime, we would also respectfully request that you communicate directly to Broadridge the SEC staff's views about whether investors are concerned about the current practice for providing interim voting information. Perhaps such communication will prompt action by Broadridge and dispose of the need for rulemaking. In any event, we believe such communication may foster some self-examination by Broadridge that may help them avoid future errors in judgment that result in practices that conflict with our shared goal of ensuring that the proxy system operates with integrity.

2. Universal proxy cards

As discussed at our meeting and as indicated in CII letters to the SEC of March 11, 2014[8] and January 8, 2014,[9] we also believe the Commission should pursue a near-term initiative to revise Rule 14a-4(d) to facilitate shareowners' ability to vote for their preferred combination of director nominees in a proxy contest. We note that our petition for rulemaking on this issue is generally consistent with the July 2013 recommendation of the Investor as Owner Subcommittee of the SEC's Investor Advisory Committee.[10]

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[7] *See, e.g.,* Mar. 6, 2014 Letter, *supra* note 4, at 2 & n.5 (quoting CII member and Assistant Comptroller for Environmental, Social and Governance at New York City Office of the Comptroller expressing concern about the impact of Broadridge's actions on investors involved in exempt solicitations).

[8] Mar. 11 Letter, *supra* note 3, at 14 ("[W]e believe the Commission should have a near-term initiative to amend Section 14 eliminating the requirement to obtain a nominee's consent to be named on a proxy card in contested elections and allow shareowners to vote for their preferred combination of shareowner and management nominees on a single proxy card.").

[9] Letter from Glenn Davis, Director of Research, to Ms. Elizabeth Murphy, Secretary 1 (Jan. 8, 2014) ("[R]equesting that the Commission amend the proxy rules under Section 14 of the Securities Exchange Act of 1934 . . . to facilitate the use of universal proxy cards featuring a complete list of board candidates in cases of contested election of directors."), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/01_08_14_CII_letter_to_sec_petition%20_for_rulemaking.pdf.

[10] Recommendations of the Investor as Owner Subcommittee Regarding SEC Rulemaking to Explore Universal Proxy Ballots 2 (July 25, 2013) ("The Commission should explore relaxing the 'bona fide nominee' rule embodied in Rule 14a-4(d)(1) promulgated in 1966 under Section 14 of the Securities Exchange Act of 1934 to provide proxy contestants with the option (but not the obligation) to use Universal Ballots in connection with short slate director nominations . . . ."), http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-universal-proxy.pdf.

We believe a limited scope amendment to Section 14 is necessary to more fully enfranchise shareowners and better fulfill the Commission's long-standing goal of ensuring that the proxy process functions, as nearly as possible, as a replacement for an in-person meeting of shareowners. At our annual conference in Washington, DC earlier this month, issues relating to universal proxy cards and CII's related petition for rulemaking were prevalent topics of discussion for both conference presenters and CII members in attendance.

Conference presenters addressing issues relating to universal proxy cards included SEC Commissioner Kara Stein.[11] As reported by Reuters:

> Stein drew applause when she threw her support behind requiring universal proxy ballots, a plan that CII formally petitioned the agency to consider in January.
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> "It is time for the commission to consider permitting, if not mandating, universal proxy ballots, Stein said."[12]

We wholeheartedly agree with Commissioner Stein that "it is time" for the SEC to act on our rulemaking petition.

3. Director compensation arrangements

Finally, as discussed at our meeting and in CII's letter to you of March 31, 2014, we believe that the SEC should promptly develop and issue interpretative guidance or a limited scope amendment to Section 14(a) to improve the disclosure of information about compensation arrangements between a nominating shareowner and a nominee to the board of directors.[13] As discussed at our meeting and in our letter, there appears to be significant controversy surrounding the practice of nominating shareowners' compensating directors or director nominees in the context of threatened or completed proxy contests.[14]

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[11] Sarah N. Lynch, *SEC's Stein Says Investor Rules Need Reform*, Reuters, May 8, 2014, at 1, http://www.reuters.com/article/2014/05/08/sec-stein-investor-reforms-idUSL2N0NU12820140508.
[12] *Id.*
[13] Letter from Jeff Mahoney, General Counsel, to Keith F. Higgins, Director 4 (Mar. 31, 2014) ("Interpretative guidance or amendments to the proxy rules that require the disclosures outlined above will enhance shareholder protection and strengthen the shareowner franchise."), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_31_14_CII_letter_to_SEC.pdf.
[14] *See, e.g.*, Stephen Foley, *Shareholder Activism: Battle for the Boardroom*, Fin. Times, Apr. 23, 2014, at 3 (Describing the current controversy on whether compensation arrangements between nominating shareowners and board nominees create "diverging incentives and disharmony in the boardroom."), http://www.ft.com/intl/cms/s/2/a555abec-be32-11e3-961f-00144feabdc0.html.

We believe the appropriate approach to address this controversy is through requiring greater transparency to investors about such arrangements. Support for our view on this issue is not limited to institutional investors. For example, just last week, the corporate law firm of Wachtell, Lipton, Rosen & Katz issued the following statement endorsing our request:

> [W]e support CII's call for the SEC to consider interpretative guidance or amendments to the proxy rules to require shareholder contestants in a proxy contest to disclose [certain specified information].
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> . . . .
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> CII has identified a[n] . . . inconsistency between the . . . proxy disclosures [for] . . . director pay, and the . . . disclosures required of shareholders waging a proxy contest. . . . [F]ull transparency would . . . enable shareholders to be fully informed when considering a dissident slate.[15]

We, therefore, respectfully request that the staff promptly issue, at a minimum, interpretative guidance to Section 14(a) to improve the disclosure of information about compensation arrangements between nominating shareowners and director nominees.

Thank you and your staff for being so generous with your time in discussing the above referenced issues and for carefully considering the views of institutional investors. If you have any questions regarding this letter, please contact me directly at 202-261-7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel

[15] Sebastian V. Niles et al., Wachtell, Lipton, Rosen & Katz 1 (May 14, 2014), http://www.wlrk.com/webdocs/wlrknew/AttorneyPubs/WLRK.23330.14.pdf.