



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

June 25, 2014

Jeff Mahoney
General Counsel
Council of Institutional Investors
888 17th Street, NW
Suite 500
Washington, DC 20006-3310

Dear Mr. Mahoney:

Thank you for your May 22, 2014 letter in which you reiterated concerns you have previously expressed about the disclosure of preliminary voting information, the ability to use universal proxy cards, and the disclosure of compensation arrangements between a director nominee and the nominating shareholder. I appreciate the importance of these concerns to your members and would therefore like to share some of my thoughts on these concerns.

Preliminary Voting Information

In your letter, you expressed concerns about the recent changes by Broadridge to its policy of disclosing the preliminary results of the votes cast by shareholders on a particular matter. To address these concerns, you asked us to clarify or specify that the "impartiality" requirement of Exchange Act Rule 14a-2(a)(1) also applies to the disclosure of preliminary voting information. You also requested that we communicate directly with Broadridge about investors' concerns with its recent changes.

I can assure you that we share your goal of ensuring fairness and integrity in the proxy process. Since the issue first came to our attention, the Division staff has met with representatives from Broadridge on several occasions to discuss the company's policy for disclosing preliminary voting information and to better assess the policy's impact on the overall proxy voting process.

The staff has considered carefully your recommendation that the impartiality requirement of Rule 14a-2(a)(1) be applied to the disclosure of preliminary voting information. As I mentioned at our April 2014 meeting, however, the staff cannot add such a requirement through an interpretation of the existing language in Rule 14a-2(a)(1). The staff believes that the rule's impartiality requirement is intended to govern only the way that brokers instruct solicited persons to forward a proxy or request from the solicited persons their voting instructions. The Commission gave no indication in either the proposing release or adopting release that it should

apply beyond this purpose.¹ Extending this requirement to the disclosure of preliminary voting information could only be accomplished by the Commission. While this topic is not on the Commission's rulemaking agenda, there will be an opportunity to consider it in more detail as the Commission completes its statutorily-mandated rulemakings. Of course, in the meantime, the staff of the Division remains committed to monitoring developments in this area and, as always, welcomes your thoughts and suggestions.

Universal Proxy Cards

Your letter also recommends that the Commission facilitate the use of universal proxy cards by revising Exchange Act Rule 14a-4(d), the "bona fide nominee" rule. As noted in your letter, universal proxy cards are the subject of a recommendation submitted by the Investor Advisory Committee ("IAC") as well as your rulemaking petition.² While I cannot speak to the Commission's response to the IAC recommendation or its rulemaking agenda, I will note that the proxy process has always been intended to function as a replacement for an actual in-person meeting of shareholders to the greatest possible extent. The concept of a proxy card that includes all the director nominees – regardless of the source of the nominations – is therefore appealing as it would allow shareholders to accomplish through the proxy process what they could do through an in-person appearance at the meeting. At the same time, however, it is important to recognize that while the use of universal proxy cards affects only the relatively few contested director elections that occur each year,³ it would nonetheless represent a dramatic change in how shareholders have cast their votes in these types of elections. Therefore, careful consideration must be given to all of the possible implications that such use could have on the proxy process for director elections. Any information that you or your members may have in this regard would greatly assist the staff's consideration of the best way for moving forward on this important topic and we invite you and your members to submit such information to the public comment file for your rulemaking petition.

Director Compensation Arrangements

Finally, I appreciate your thoughts about the need for improved disclosure of compensatory arrangements between a director nominee and the nominating shareholder. Ensuring that shareholders are provided with the information material to their voting decisions is

¹ See Notice of Proposals to Amend Proxy Rules, Release No. 34-4668 (Jan. 31, 1952) ("This exemption is based on the assumption that the banker, broker or other person is acting in a ministerial capacity and is not making an independent solicitation from the beneficial owner...[I]t is proposed to amend sub-paragraph (3) thereof to provide that *the instructions given* must be impartial [emphasis added] and, therefore, cannot be slanted to favor either the management or any opposing person or group."). See also Amendment of Proxy Rules, Release No. 34-4775 (Dec. 11, 1952).

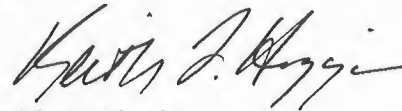
² Glenn Davis, Director of Research, Council of Institutional Investors, Petition for Rulemaking to Amend Section 14 of the Securities and Exchange Act of 1934 to Facilitate the Use of Universal Proxy Cards in Contested Elections (Jan. 8, 2014), File No. 4-672 (available at: <http://www.sec.gov/rules/petitions.shtml>).

³ According to EDGAR filings, parties have filed proxy materials for 50 actual and threatened contested director elections during calendar year 2013.

one of the Division's top priorities. To that end, where the staff has seen these compensatory arrangements being used, it has reviewed the disclosure provided and issued comments to enhance this disclosure so that shareholders are fully informed about the nature of the arrangements.⁴ Further, since our April 2014 meeting, the staff has begun to make informal inquiries to market participants to better assess the extent to which these compensatory arrangements are used in contested director elections. While the preliminary results of our inquiries have not indicated widespread use of such compensatory arrangements, we will continue our inquiries, assess developments in this area, and consider the need for any interpretive guidance or Commission rulemaking.

Thank you again for your letter. We greatly value your efforts to bring to our attention the concerns of your members and, in turn, hope that you and they will find the information in this letter to be helpful. I look forward to continuing what has been for us a very informative and productive dialogue. Please contact me at (202) 551-3110 if you have any questions or concerns.

Sincerely,



Keith F. Higgins
Director

⁴ See, e.g., comment letter from the Office of Mergers and Acquisitions, Division of Corporation Finance, dated March 28, 2013, regarding the Schedule 14A filed by Elliott Associates, L.P., et. al. in connection with the election of directors of Hess Corporation (available at: <http://www.sec.gov/Archives/edgar/data/4447/000000000013016593/filename1.pdf>.)