Via Hand Delivery

July 1, 2015

The Honorable Mary Jo White
Chair
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

The purpose of this letter is to express our gratitude to you for highlighting four of the Council of Institutional Investors' (Council)[1] proxy related priorities in your remarks last week before the Society of Corporate Secretaries and Governance Professionals (Society).[2]

We look forward to continuing to work with you, the other Commissioners, the staff of the Division of Corporation Finance, the corporate community, and all other interested market participants in successfully resolving the issues you identified in a timely manner and in a manner that benefits long-term investors and contributes to our shared goal of "a fair and efficient proxy voting system."[3]

The following are the Council's comments on each of the four topics addressed in your remarks:

Preliminary Voting Results

We support your suggestion that "companies should themselves consider leveling the field by agreeing or consenting to a mechanism that provides the interim vote tallies to shareholder proponents."[4] As you know, this is the third consecutive proxy season in which preliminary vote tallies were not provided to shareowners in an impartial fashion.[5]

---

[1] The Council of Institutional Investors (Council) is a nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding $3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of American workers. For more information about the Council and our members, please visit the Council's website at http://www.cii.org/about_us.

[2] Chair Mary Jo White, Remarks at the Society of Corporate Secretaries and Governance Professionals 69th National Conference (June 25, 2015), http://www.sec.gov/news/speech/building-meaningful-communication-and-engagement-with-shareholde.html.

[3] *Id.* at 1.

[4] *Id.* at 3.

[5] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 2 (Mar. 6, 2014) ("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."),

It is our understanding that during this proxy season many companies simply refused to respond to shareowner proponent requests for preliminary voting results. We are hopeful that companies and Broadridge will heed your call and promptly establish a mechanism prior to the 2016 proxy season "that provides interim vote tallies to shareowner proponents."[6]

In our view, in order to level the field, any possible solution must include, as you described, an "agree[ment] or consent[]" by companies and Broadridge to promptly provide the interim vote tallies to shareholder proponents when requested. In that regard, we note that the potential agreement, referenced in your remarks, that the Council, the Society and Broadridge had been working on—and for which Broadridge unexpectedly rejected—was a positive step forward. The potential agreement, however, fell far short of a "possible solution" because it failed to include any formal or informal agreement or consent by companies to participate in the arrangement.[7]

If companies and Broadridge are unwilling or unable to establish a mechanism prior to the 2016 proxy season that provides interim vote tallies in an impartial manner to shareowner proponents, we respectfully reiterate our prior requests,[8] consistent with the recommendation of the Securities and Exchange Commission's (SEC or Commission) own Investor Advisory Committee,[9] that the Commission take prompt action, in your words, "to level the playing field, such that everyone gets preliminary vote tallies, or nobody gets them."[10]

---

http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_06_14_CII_letter_SEC_proxy_distributors.pdf; Letter from Ann Yerger, Executive Director, Council of Institutional Investors, to The Honorable Mary Jo White, Chairman, U.S. Securities and Exchange Commission 1 (May 17, 2013) ("The purpose of this letter is to express our deep concerns regarding Broadridge['s] . . . recent decision to refuse to disclose voting tallies to proponents of shareowner proposals."), http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_17_13_CII_Letter_Regarding_Proxy_Distributors.pdf.

[6] Chair Mary Jo White at 3.

[7] *Id.*

[8] *See, e.g.,* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance 3 (May 26, 2015) ("[C]onsistent with the IAC recommendation, we continue to support SEC staff guidance interpreting Rule 14a-2(a)(1) to require interim vote tallies on ballot items to be provided to any participant in an active solicitation upon request."), http://www.cii.org/files/issues_and_advocacy/correspondence/2015/5-26-15%20CII%20Letter%20Regarding%20Proxy%20Distributors%20Broadridge%20Preliminary%20Voting%20docx.pdf.

[9] Recommendations of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results 8 (Oct. 9, 2014) ("*That the staff of the Commission take the steps necessary to ensure that the exemption in Rule 14a-2(a)(1) is conditioned upon the broker (and any intermediary designated by the broker) acting in an impartial and ministerial fashion throughout the proxy process, including the disclosure of preliminary voting information*."), https://www.sec.gov/spotlight/investor-advisory-committee-2012/impartiality-disclosure-prelim-voting-results.pdf.

[10] Chair Mary Jo White at 3.

Universal Proxy Ballots

We appreciate your announcement that you have requested "the staff to bring appropriate rulemaking recommendations before the Commission on universal proxy ballots."[11] We agree with you in the "fundamental concept that our proxy system should allow shareholders to do through the use of a proxy ballot what they can do in person at a shareholders' meeting."[12] That fundamental concept underlies our January 2014 rulemaking petition to the Commission to facilitate the use of universal proxy cards in the contested election of directors.[13]

We acknowledge that revising the proxy rules to implement universal proxies presents a number of detailed questions.[14] We, however, believe our membership approved policies,[15] our rulemaking petition[16] and our March letter to the Commission in response to the related roundtable, provides an initial basis for addressing many of those details.[17] With respect to other details, we look forward to working with our members, companies and the Commission staff to resolve issues that may arise.

---

[11] *Id.* at 4.
[12] *Id.*
[13] Letter from Glenn Davis, Director of Research, Council of Institutional Investors, to Ms. Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission 9 (Jan. 8, 2014) ("We firmly believe that the . . . introduction of universal proxy cards for contested elections are integral to facilitating robust corporate democracy and necessary to fulfilling the Commission's goal of ensuring that the proxy process functions, as nearly as possible, as a replacement for an in-person meeting of shareholders."), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/01_08_14_CII_letter_to_sec_petition%20_for_rulemaking.pdf.
[14] Chair Mary Jo White at 4 ("if the Commission were to revise the proxy rules to implement a universal proxy ballot, the 'devil would be in the details'").
[15] Council of Institutional Investors, Corporate Governance Policies § 2.2 Director Elections (updated Apr. 1, 2015) ("To facilitate the shareholder voting franchise, the opposing sides engaged in a contested election should utilize a proxy card naming all management nominees and all shareholder-proponent nominees, providing every nominee equal prominence on the proxy card."), http://www.cii.org/files/committees/policies/2015/04_01_15_corp_gov_policies.pdf.
[16] Letter from Glenn Davis at 7-9 (addressing "some of the design choices and potential objections" with a proposed rule).
[17] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission 8 (Mar. 5, 2015) (describing some guidance on the mechanics of a proposed rule), http://www.cii.org/files/issues_and_advocacy/correspondence/2015/03_05_15_cii_letter%20to%20SEC%20on%20universal%20proxy.pdf.

Unelected Directors

We support your view that boards should disclose to shareowners the "thought process and reasons" why a board member's resignation was not accepted when the director received a majority withhold vote.[18] We also agree that such disclosure should be "specific, and avoid boilerplate."[19]

We believe more specific disclosures would assist long-term investors in evaluating whether they find credible the board's review and justification for retaining unelected or so-called "zombie directors." We, however, strongly believe, consistent with our membership approved policies,[20] that a disclosure only approach is an inadequate remedy to address the ills of the plurality voting system for the uncontested election of directors that exists at most U.S. public companies.[21]

As you are aware, in an uncontested election of directors under a plurality voting system, "shareowners may vote for, but not against, a nominee . . . [and] a nominee only needs one 'for' vote to be elected and unseating a director is virtually impossible."[22] Thus, the plurality voting system that exists at most U.S. public companies is incompatible with the fundamental right of a shareowner to elect directors and cannot be cured simply by disclosure.[23]

---

[18] Chair Mary Jo White at 5.
[19] *Id.*
[20] § 2.2 Director Elections ("Directors in uncontested elections should be elected by a majority of the votes cast.").
[21] *See, e.g.,* R. Aggrawal, S. Dahiy and N. Prabhala, The Power of Shareholder Votes: Evidence from Director Elections 9-10 (May 22, 2015) ("The vast majority of U.S. firms continue to follow plurality rather than majority voting."), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2609532.
[22] The Investors' Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 22 (July 2009), http://www.cii.org/files/issues_and_advocacy/dodd-frank_act/07_01_09_iwg_report.pdf.
[23] *See, e.g.,* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 2 (July 8, 2014) (explaining why a proposed disclosure only solution "will not resolve the zombie director problem"), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/07_08_14_CII_letter_to_SEC.pdf.

As explained in our July 2014 letter to the Director of the Division of Corporation Finance on this topic:

> In our view, the only viable solution to the zombie director phenomenon is to require public companies to adopt a majority voting regime that imposes reasonable limits on the ability of boards to reject the resignation of losing directors. In that regard, in June 2013 we submitted detailed proposals to the NYSE Euronext . . . and the NASDAQ OMX . . . requesting that they adopt proposed listing standards for approval by the SEC to accomplish that goal. Despite repeated requests in person and in writing from CII and many other market participants, to date, the NASDAQ and NYSE have refused to move forward on our proposals.[24]
>
> . . . .
>
> CII recommends that the SEC, consistent with its mission and role as the "investor's advocate," publicly advocate for the adoption by the NYSE and NASDAQ of CII's proposed listing standards requiring majority voting in the uncontested election of directors and reasonable limits on the ability of boards to reject the resignation of losing directors.[25]

Shareholder Proposals

We support your "goal of providing clarity for next year's proxy season" with respect to the scope and application of Rule 14a-8(i)(9).[26] We continue to believe that "prolonging the time period during which the SEC staff will not express its views on the application of the counter proposals exclusion would significantly disrupt the shareowner proposal process for both companies and proponents."[27]

---

[24] *Id.* at 3 (footnotes omitted).
[25] *Id.* at 4 (footnote omitted).
[26] Chair Mary Jo White at 6.
[27] Letter from Ann Yerger, Executive Director, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 2 (Mar. 25, 2015), http://www.cii.org/files/issues_and_advocacy/correspondence/2015/03_25_15_CII_letter_on_14a-8(i)(9)%20SEC.docx.pdf.

We agree with your observation that "[b]ased on this year's experience," [so-called] 'competing' proposals" did not confuse shareowners or companies.[28] That observation supports our view that SEC staff interpretative guidance on Rule 14a-8(i)(9) should narrow the application of the exclusion by distinguishing between binding and non-binding proposals when considering what constitutes a direct conflict.[29]

As we explained in more detail in our letter of March 2015 to the Director of the Division of Corporation Finance, we believe a binding/non-binding approach to interpreting Rule 14a-8(i)(9) would be consistent with the history of the Commission's proxy rules and, importantly, would limit the gamesmanship to which you previously stated, and we agree, "has no place in the process."[30]

Thank you again for your remarks of last week on these important issues. Should you have any questions or require any additional information about the Council's views expressed in this letter, please feel free to contact me at 202.261.7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel

[28] Chair Mary Jo White at 6.
[29] Letter from Ann Yerger at 2 ("We continue to support this binding/nonbinding distinction for determining what constitutes a direct conflict.").
[30] *Id.* (quoting Chair Mary Jo White Remarks at the Tulane University Law School 27th Annual Corporate Law Institute 5 (Mar. 19, 2015), http://www.sec.gov/news/speech/observations-on-shareholders-2015.html.