Via E-mail

November 5, 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 and the Securities and Exchange Commission (SEC) Staff (Staff) for publishing CF Staff Legal Bulletin No. 14H (CF) (SLB 14H). We also want to take this opportunity to update you on the progress of some other proxy related priorities you raised in your remarks last June before the Society of Corporate Secretaries and Governance Professionals.

SLB 14H

We appreciate the Staff’s October 22 decision on the application of Rule 14a-(8)(i)(9), known as the counter proposals exclusion, prior to the commencement of the 2016 shareowner proposal process. While not identical to the approach to counter proposals espoused by the Council of Institutional Investors (CII), some market participants acknowledge:

[T]he . . . new approach to conflicting proposals will make it considerably more difficult for companies to rely on Rule 14a-8(i)(9) to exclude shareholder proposals that differ from, but are not mutually exclusive with, management proposals. This will likely result in the inclusion by companies of significantly more shareholder proposals than would have been the case without the change in Staff position articulated in SLB 14H.

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3 See SLB 14H.
4 Jeff Mahoney, General Counsel, Council of Institutional Investors 5 (July 1, 2015), http://www.cii.org/correspondence.
We believe that while the guidance “may be a higher burden for some companies seeking to exclude a proposal,” it is appropriate and will promote a more meaningful proposal process.

Preliminary Voting Results

As you know, we strongly supported your advice back in June that “companies should themselves consider leveling the field by agreeing or consenting to a mechanism that provides the interim vote tallies to shareholder proponents.” As we enter the 2016 proxy season, however, CII is unaware of any activity by companies, Broadridge, or the SEC to resolve this issue.

Consistent with the recommendation of the SEC’s own Investor Advisory Committee, we continue to believe that the Commission should take prompt action either through rulemaking, the issuance of guidance, or enforcement activity that, in your words,

level[s] the playing field by agreeing, such that everyone gets preliminary vote tallies, or nobody gets them. Alternatively, [and perhaps more realistically] a rule [or guidance, or a New York Stock Exchange enforcement action] could permit brokers to provide issuers with the total votes that have been cast only in order to determine quorum, rather than a preliminary vote tally that would indicate how the shareholders have voted.
In addition to the fundamental concept, we also believe that universal proxy cards would benefit companies and shareowners alike because each nominee in a universal ballot stands on her or his own merit and cannot “hide in the collective.”¹²

Thank you again for your continuing work on these important shareowner issues. Should you have any questions or require any additional information about the views expressed in this letter, please feel free to contact me at 202.261.7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel