

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).¹ 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.²

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.³ While not identical to the approach to counter proposals espoused by the Council of Institutional Investors (CII),⁴ 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.⁵

¹Division of Corporation Finance, Securities and Exchange Commission, Shareholder Proposals, Staff Legal Bulletin No. 14H (CF) (Oct. 22, 2015), <https://www.sec.gov/interps/legal/cfslb14h.htm>.

² Chair Mary Jo White, Building Meaningful Communication and Engagement with Shareholders, Society of Corporate Secretaries and Governance Professionals, 69th National Conference, Chicago, Ill. 3 (June 25, 2015), <http://www.sec.gov/news/speech/building-meaningful-communication-and-engagement-with-shareholde.html>.

³ See SLB 14H.

⁴ Jeff Mahoney, General Counsel, Council of Institutional Investors 5 (July 1, 2015), <http://www.cii.org/correspondence>.

⁵ Covington, SEC Staff Publishes Staff Legal Bulletin 14H: New SEC Guidance Significantly Narrows the Shareholder Proposal Rule 2 (Oct. 27, 2015), http://www.mycorporateresource.com/index.php?option=com_content&view=article&id=168012:covington

We believe that while the guidance “may be a higher burden for some companies seeking to exclude a proposal,”⁶ 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.”⁷ 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.⁸

Universal Proxy Ballots for Contested Director Elections

Finally, we also continue to appreciate and support your June 2015 announcement requesting “the staff to bring appropriate rulemaking recommendations before the Commission on universal proxy ballots.”⁹ 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.”¹⁰ That fundamental concept underlies CII’s January 2014 rulemaking petition to the SEC to facilitate the use of universal proxy cards in the contested election of directors.¹¹

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⁶ See Staff Legal Bulletin No. 14H.

⁷ See Chair Mary Jo White.

⁸ *Id.*

⁹ *See id.*

¹⁰ *Id.*

¹¹ 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

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In addition to the fundament 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,

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

Jeff Mahoney
General Counsel

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%20for_rulemaking.pdf.

¹² Katie Kuehner-Hebert, SEC Looking Into Universal Proxy Ballots, CFO.com (June 26, 2016) (quoting Roy Katzovicz, chairman of investment firm Saddle Point Group and a member of the SEC’s investor advisory committee.), <http://ww2.cfo.com/governance/2015/06/sec-looking-universal-proxy-ballots/>.