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SEC Staff Rules Proposals on Interim Vote Tallies Can Be Excluded as Ordinary Business Matters

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As a result of the controversy regarding the availability of interim vote tallies during the 2013 proxy season, which we've previously discussed **here**, numerous companies received shareholder proposals earlier this year asking that those tallies not be available to management and the board. The resolution contained a list of the types of proposals this would apply to, as well as a list of exceptions.

Interim vote tallies generally refer to Broadridge's report to the company of the number of votes cast in favor, against or abstentions for the proposals on the proxy card, beginning 15 days before the meeting. The debate concerned perceived advantages of management knowing how shareholders were voting, while a shareholder who may solicit in opposition to the company would not have access to that information.

Companies made numerous arguments to the SEC staff for excluding the proposal during the beginning of the 2014 season, including on grounds of vagueness, ordinary business and in some cases, as against the law. Ultimately, the staff determined that the proposal was vague, because it provided that preliminary voting results "would not be available for solicitations made for 'other purposes,' but that they would be available for solicitations made for 'other proper purposes.'" As is their usual procedure, the staff declined to weigh in on the alternative basis for exclusion offered by the companies.

Since the vast majority of proposals were not voted on, there was little attention paid to the revised versions that were sent to companies that hold meetings later in the year. The resolutions in these proposals were substantially streamlined, to ask that no preliminary voting results shall be provided to management unless the board determines that there is a compelling reason to obtain them. The long lists regarding applicability and exclusions disappeared.

Nonetheless, the SEC staff recently decided that these proposals can also be excluded, but on different grounds. The staff concluded that the proposal "relates to the monitoring of preliminary voting results with respect to matters that may relate to [the company's] ordinary business." With that determination, perhaps the trajectory of these proposals stops.

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