

Broadridge Explains Its Current Policies on Interim Vote Tallies with Issuers as Decision-Makers, while CII Pursues Regulatory Solutions

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There remains some confusion about who exactly is getting information about vote tallies before an annual meeting, since the controversy in May 2013 surrounding the independent chair proposal at J.P. Morgan. Broadridge's recent [report](#) clarifies this and other mysteries about the proxy voting process. As the report emphasizes, there are no SEC rules or other rules governing the practice of providing voting information in advance of the meeting, including to issuers.

Contested meetings. At meetings where there is more than one proxy card, Broadridge will continue its practice of providing all soliciting parties with interim vote information at the same time. Broadridge processes about 40 to 70 proxy contests annually.

Uncontested meetings. Broadridge distributes proxy materials for about 12,000 uncontested meetings annually, and acts on behalf of banks and brokers, who cast votes as instructed by beneficial owners or at their discretion when NYSE rules permit if no instructions are received. At these meetings where only the issuer is soliciting proxies, the day after proxy materials are distributed, Broadridge provides issuers and their agents with access to voting information that contains aggregated instructions for each proposal. Then 10 to 15 days before the meeting depending on when proxy materials were distributed, Broadridge gives issuers an initial "client proxy" representing a vote by Broadridge on behalf of their clients. This proxy is then updated daily. No regulatory requirements mandate providing issuers with information on votes cast, or even the actual proxy that far in advance of the annual meeting.

About 20 times a year, Broadridge also distributes exempt solicitation communications, usually a letter urging opposition to a company ballot item such as withholding votes for directors or say-on-pay, or supporting a shareholder proposal. Prior to May 2013, Broadridge had been providing exempt solicitors with voting status information about the proposal that was the subject of that solicitation, usually unbeknownst to the issuer. This practice, which apparently the SEC was aware of for at least some time, had been going on for 10 years, and there have been 11 requests since fall 2007.

Currently, following a practice adopted in late 2013, Broadridge will give vote tallies to third parties conducting exempt solicitations if (a) the issuer requests it and (b) the third party signs a confidentiality agreement that includes Broadridge and the issuer. The report ends with what may be a plea that "Broadridge is and wishes to remain impartial on these matters." Under Broadridge's new approach, the pressure will now be on issuers to consider whether to give the information to someone who is opposing the issuer's position. There has only been one instance where the exempt solicitor obtained information since Broadridge made this change.

More change may be to come. The Council of Institutional Investors has [appealed](#) to the SEC Division of Corporation Finance requesting that the Division either prohibit the disclosure of interim vote tallies to anyone, disclose only the number of votes without details on how they were cast or give the tallies to any soliciting party. CII also asks that the Division require interim vote tallies to be reported as material information on Form 8-K and that Broadridge's policy return to its former state prior to the events of May 2013.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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