

Chair White Asks Companies to Consider Sharing Interim Vote Tallies with Proponents

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It comes as no surprise that Chair White addressed proxy matters in [her keynote remarks](#) at the Society of Corporate Secretaries and Governance Professionals' National Conference, which was attended by more than 750 in Chicago.

Her talk focused on certain company communications with shareholders that may put the two "at odds," where the SEC staff or Commission has been asked to clarify rules, mediate disputes or propose rulemaking solutions. She started with the fairly controversial and often misunderstood topic of interim vote tallies, which we previously discussed [here](#).

Companies currently receive preliminary vote results from the agent for banks and brokers who hold shares in street name before the meeting. This allows companies to confirm that quorum can be achieved but also provides the company with updated information on the vote results as shareholders cast ballots. In May 2013, Broadridge discontinued its previous practice of providing the same interim vote tallies to proponents who distribute exempt solicitation materials, unless the company consents.

Some shareholders have criticized the issuance of these tallies to companies and not shareholders. The SEC staff has stated that the proxy rules do not address the issue, but some have asked the SEC to require that brokers provide the information to all interested participants.

Chair White urged companies to consider providing interim vote tallies voluntarily to shareholder proponents, which the rules do not prohibit. She declared that any SEC rulemaking that is conditioned on the brokers' exemption from the proxy rules due to the "impartiality" requirement could result in everyone, or no one, getting interim vote tallies. Alternatively, companies could be given only the total votes cast to determine quorum without knowing how shareholders voted. In essence, she indicated a regulatory solution may take away what is currently provided to companies, or have negative consequences, compared to a negotiated result between companies and interested parties. In her view, for companies this issue could be "an opportunity to improve investor relations" instead of perceived as a corporate problem.

Chair White also stated that she has asked the SEC staff to bring rulemaking recommendations to the Commission about universal proxy ballots, a single proxy card that would list both sides' nominees in contested director elections to allow shareholders to choose among them. We previously discussed universal ballots [here](#).

A separate post will discuss Chair White's comments on "unelected" directors who remain on boards and shareholder proposals.

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.

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