Via Email

May 17, 2013

The Honorable Mary Jo White
Chairman
U.S. Securities and Exchange Commission
101 F Street, NE
Washington, DC 20549

Re: Proxy Distributors

Dear Chairman White:

I am writing on behalf of the Council of Institutional Investors ("CII"), a non-profit association of corporate, public and union employee benefit plans with combined assets in excess of $3 trillion. CII members are large, long-term shareowners responsible for safeguarding the retirement savings of millions of American workers.[1]

The purpose of this letter is to express our deep concerns regarding Broadridge Financial Solutions, Inc.'s ("Broadridge") recent decision to refuse to disclose voting tallies to proponents of shareowner proposals.[2] We realize that the U.S. Securities and Exchange Commission ("SEC" or "Commission") has limited authority over proxy distributors like Broadridge. However, given the SEC's expressed interest in ensuring the "U.S. proxy [voting] system as a whole operates with the accuracy, reliability, transparency, accountability, and integrity that shareowners and issuers should rightfully expect,"[3] CII urges the Commission to: (1) do all in its power to put an immediate stop to this patently unfair and arbitrary change in practice; (2) evaluate whether there should be regulatory reform designed to promote greater accountability of, and impartiality by, proxy distributors; and (3) further extend the time for consideration of the New York Stock Exchange LLC's ("NYSE") proposed rule change amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual, to ensure that Broadridge's recent actions can be fully assessed in the context of the issues raised by the proposal.[4]

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[1] For more information about the Council of Institutional Investors ("CII"), including its members, please visit CII's website at http://www.cii.org/members.

[2] Susanne Craig & Jessica Silver-Greenberg, *JPMorgan Shareholders Are Denied Access to Results*, NY Times, May 15, 2013, http://dealbook.nytimes.com/2013/05/15/jpmorgan-voters-are-denied-access-to-results/.

[3] Securities and Exchange Commission, Concept Release on the U.S. Proxy System Release 7, SEC Release No. 34-62495 (July 14, 2010), http://www.sec.gov/rules/concept/2010/34-62495.pdf.

[4] Letter from Jeff Mahoney, General Counsel, to Ms. Elizabeth M. Murphy, Secretary 4-5 (Apr. 5, 2013), http://www.cii.org/files/issues_and_advocacy/correspondence/2013/04_05_13_cii_letter_to_nyse_on_proxy_distribution_fees.pdf (comment letter identifying a number of concerns with the New York Stock Exchange LLC's proposed rule change that would establish a "success fee" to encourage the use of enhanced brokers' internet platforms—concerns that have been exacerbated by Broadridge Financial Solutions, Inc.'s recent actions).

Broadridge's decision, reportedly made in response to a request by trade association Securities Industry and Financial Markets Association ("SIFMA"), raises deeply troubling questions about the fairness and impartiality of the proxy system. The timing of the decision raises particular concerns: Not only was it made abruptly in the middle of proxy season without any opportunity for investor or public input, but it came only a few days before the conclusion of a highly publicized and contentious exempt solicitation at a company whose affiliates are SIFMA members.

When it comes to the distribution and tallying of voting instructions for U.S. companies, Broadridge is a monopoly, controlling more than 95 percent of the market, according to company representatives. As such, CII believes Broadridge has obligations not simply to its specific clients—including brokers, companies and proponents—but also to the investing public in general. If Broadridge cannot demonstrate fairness to all interested parties, regulators should intervene.

Broadridge's decision to selectively disclose critical—and arguably material—information to issuers but not to proponents is just another example of the lack of impartiality on the part of proxy distributors. Other examples include:

- In spite of repeated complaints from shareowners, Broadridge persisted in maintaining a "vote all items with management" button on its electronic platform. It maintained this button despite the fact that a comparable option is not permitted on proxy cards filed by management. Broadridge only recently discontinued this practice after being prohibited by Commission staff.[5]
- Broadridge is under no legal obligation to mail within a certain time period shareowner communications that are unrelated to proxy contests. As a result, Broadridge makes its own determination as to when to process mailings from shareowners to other shareowners. CII's understanding is that Broadridge's practice has been to assign a low priority to shareowner-to-shareowner communications, placing them at the bottom of the queue for handling after company materials are processed.

We also note that Broadridge acts as an agent for the banks and brokers that are required to ensure the voting rights of "street name" and other beneficial owners. Thus, the above examples, whether viewed individually or in their totality, present the appearance that brokers and banks are also not acting in an impartial fashion.

In addition, Broadridge's decision to refuse to disclose voting tallies to proponents of shareowner proposals may result in significant unintended consequences to the proxy voting system. Knowing that only one party has knowledge of vote tallies may motivate institutional investors to delay their votes until the last minute. Such an outcome could prove disruptive to companies monitoring for quorum.

[5] *Id.* at 4.

For all of the above reasons, CII believes that proxy distributors should continue to provide voting information, with the appropriate confidentiality safeguards necessary to ensure compliance with the federal securities laws, to issuers *and* to proponents—whether or not proponents retain the proxy distributors to disseminate materials. Such an approach promotes efficiency and ensures a critical element of fairness in the proxy voting process. The only impartial alternative would be to bar interim disclosure of proxy voting information to all parties equally.

Fairness should be the fundamental underpinning of the U.S. proxy system. Thus, as indicated above, CII urges the Commission, as part of its “proxy plumbing” project, to prioritize an examination of the role, the oversight, and the accountability of proxy distributors and the lack of impartiality in the proxy process.

Sincerely,

Ann Yerger

Ann Yerger
Executive Director

cc: Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Troy Paredes
Commissioner Elisse Walter