

Corporate Securities Law

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Broadridge U.S. Changes its Policy on Interim Voting Reports

Broadridge Financial Solutions Inc. (“**Broadridge**”), the largest provider of proxy distribution and tallying services for North American companies, recently announced a change to its U.S. policy on providing interim voting results during proxy contests. Under the new policy, Broadridge will only provide each proxy contest participant (i.e. the corporation and the dissident shareholder) with interim voting reports on the shareholders supporting that participant. It will no longer provide comprehensive interim reports on shareholders supporting other participants, unless both sides agree to share interim voting results.

This new policy, which mirrors the current approach in Canada, will significantly effect not only U.S. issuers but also Canadian issuers with U.S. shareholders. Whereas the availability of complete preliminary voting data previously enabled U.S. proxy contest participants to monitor for a quorum, predict likely outcomes, detect errors in voting data and direct efforts to solicit

investors that had not yet voted, U.S. participants will no longer be able to tell whether an investor has voted for the other side, if at all. Although the new policy contains an exception, under which Broadridge will provide full voting data to both sides if they both agree to such disclosure, proxy contest participants may very well refuse to cooperate for strategic reasons. As a result, participants in proxy contests can expect to see a request to share interim voting results (on both sides of the border) added to the standard “proxy protocol” letter (typically submitted by dissidents that includes requests that, while not legally required, are made to ensure the “fairness” of the process, such as the appointment of an independent chair, an agreement on the form of proxy used at the meeting and the right to review both sides’ proxies prior to the meeting).

The new Broadridge policy thus introduces new uncertainties into the U.S. proxy contest landscape by weakening participants’ abilities to predict proxy voting outcomes. Broadridge did not provide reasons for the policy change.

For further information on these latest developments, please contact any member of our Corporate Securities Group.