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January 9, 2017

Brent J. Fields, Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Universal Proxy Proposing Release, File No. S7-24-16

Dear Mr. Fields:

We appreciate the opportunity to submit comments on proposed amendments to the federal proxy rules for the use of universal proxies in contested solicitations (hereafter, the “proposed rules”). Broadridge does not have an opinion on the policy aspects of the proposed rules: our comments pertain only to certain operational and technology considerations. In particular, based on our experience in processing universal proxies in a few other situations, we believe that when voting instructions are not clear, some shareholders may fail to properly execute their proxies. To avoid this unintended consequence, the proposed rules should be augmented to include examples of universal proxies, together with voting instructions that are clear to all shareholders. Where practicable, the examples should be functionally consistent across solicitations where universal proxies could be used.<sup>1</sup>

Over the past few years Broadridge has processed universal proxies in a few meetings of Canadian issuers. The voting instructions provided by the contestants were generally subject to negotiations between them. In some cases, the instructions that were ultimately agreed upon by the contestants were not entirely clear to all voters. This was evidenced by the fact that the number of instances of improperly executed proxies exceeded levels typically seen in the millions of other proxies that we process each year.<sup>2</sup>

While electronic communications and voting platforms can provide limits, alerts, and other safeguards to prevent “over” and “under” voting of director nominees, shareholders who vote their proxies through paper forms would especially benefit from clear and consistent instructions. Retail shareholders in particular may be more prone to improperly executing their proxies because they are more likely to use hardcopy ballots and hardcopy vote instruction forms (“VIFs”) to submit their votes.<sup>3</sup> Without clear instructions, they could inadvertently make marks (e.g., for, against, abstain) on a greater number of candidates than the voting instructions permit them to make, thus, potentially invalidating their proxies. Without functionally consistent instructions, shareholders

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<sup>1</sup> Broadridge does not define the voting instructions contained in a proxy. Broadridge acts on instructions provided by issuers, opposition solicitors and our custodian bank and broker-dealer clients.

<sup>2</sup> In meetings that do not involve the use of universal proxies, improper execution may involve the failure on the part of a shareholder to sign or date a proxy that is submitted in hardcopy form. It may also involve the addition by shareholders of stray marks including (writing in) names that are not bonafide nominees.

<sup>3</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” Question 55, “Could the use of a universal proxy card lead to shareholder confusion? If so, do the proposed formatting requirements help reduce any shareholder confusion? Are there other requirements the proxy rules should include or other steps we should take to help reduce such confusion?”

could also fail to properly execute universal proxies when they make marks on fewer candidates than is permitted, i.e., if the voting instructions revert “under” votes, by default, to the recommendations of soliciting parties and if, as a result, the maximum number of candidates is thereby exceeded.

Examples of universal proxies and voting instructions provided under the proposed rules might contain consistent language for how “over” votes and “under” votes are treated, and for how defaults, if any, are applied. For example, they might indicate that if “X” director seats are available for election, then shareholders are permitted to make marks on a maximum of “X” candidates, in total, irrespective of the slates from which they are selected. The instructions might inform shareholders that a mark in favor of one candidate and a mark against another candidate are counted as votes on two candidates. Similarly, for example, the instructions might specify that if a shareholder marks fewer than “X” candidates, his or her votes would be applied only to those candidates receiving specific marks from the shareholder.<sup>4</sup>

Group voting on partial slates can be facilitated with clear instructions.<sup>5</sup> Universal proxies can be mechanically clear to all shareholders without a mandate that soliciting parties utilize the same proxy card.<sup>6</sup> Mirror-image universal proxy cards, while not essential, would likely reduce the potential for confusion on the part of some shareholders.<sup>7</sup>

Universal proxies can be mechanically clear to all shareholders when each slate contains a choice to vote in favor of all nominees on that slate, as the rule proposes.<sup>8</sup> We note that the proposed rules do not require that a choice be provided on each slate to vote against all nominees on that slate. If such an option were to be required under the rules, we believe it could cause unnecessary confusion for shareholders and, as a result, some shareholders would fail to properly execute their proxies.

Should the proposed rules be adopted, modifications would be made to Broadridge’s electronic communications and voting platforms (proxyvote.com and ProxyEdge) to provide shareholders with

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<sup>4</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” Question 53, “Should we require that the proxy card prominently disclose the maximum number of nominees that can be voted upon and the effect of over-voting or under-voting as proposed? Is this disclosure sufficient for shareholders to understand the implications? How else can we address these issues, including mitigating any risk of over-voting with universal proxies?”

<sup>5</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” Question 53, “Should the universal proxy card provide the ability for a shareholder to vote for all of a soliciting person’s nominees as a group only where both parties have proposed a full slate of nominees as proposed? Should group voting be permitted where one party has proposed a partial slate? Should we additionally permit group voting where a shareholder director nominee is included in the registrant’s proxy material pursuant to proxy access provisions in the registrant’s governing documents or applicable state or foreign law? Would group voting in such circumstances create an unfair advantage for the registrant or other party providing a full slate?”

<sup>6</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” Question 58, “Should we instead mandate the use of a single universal proxy card?”

<sup>7</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” Question 57, “Should the proposed rules be more prescriptive? For example, should we require both parties’ universal proxy cards to be mirror images of each other, except for the individuals to whom proxy authority is granted?”

<sup>8</sup> Refer to SEC file number S7-24-16, “Universal Proxies,” pages 76. “Where both parties have proposed a full slate of nominees and there are no proxy access nominees, we are also proposing that the proxy card may provide the ability to vote for all dissident nominees as a group and all registrant nominees as a group.”

limits or alerts each time they attempt to cast marks on universal proxies that would exceed the number of marks permitted by the voting instructions provided. To the extent that the instructions vary for each solicitation, complex functional logic would be necessary to handle a potentially large number of variations. Modifications would be made to Broadridge's programs for scanning and processing paper proxies and paper VIFs consistent with the voting instructions provided. To the extent that improperly executed proxies are returned to a shareholder's broker-dealer or custodian bank, manual intervention would add costs.

As with any contested solicitation, Broadridge would anticipate an increase in requests for analyses and information from issuers, opposition parties, and their solicitors -- including vote status reporting on a daily basis. Broadridge would respond to these needs in ways that are consistent with contests generally.

We have assessed the systems, processing, and technology requirements of the proposed rules. We estimate they would require approximately 8,200 "people hours" for development and testing. Depending on the final requirements of the rules, Broadridge and other proxy services providers may need to perform additional customization and systems development for each meeting in which universal proxies are used.<sup>9</sup>

As always, we are committed to making the investments necessary to implement SEC rules as effectively and efficiently as possible. We look forward to working with the SEC to achieve this objective.

Sincerely



cc: Honorable Maryjo White, Chair  
Honorable Michael Piwowar, Commissioner  
Honorable Kara Stein, Commissioner  
Keith Higgins, Director, Division of Corporation Finance  
David Fredrickson, Chief Counsel & Associate Director, Division of Corporation Finance  
Michele Anderson, Associate Director, Division of Corporation Finance  
Tiffany Posil, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance  
Christina Chalk, Senior Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance  
Steven G. Hearne, Senior Special Counsel, Office of Rulemaking, Division of Corporation Finance

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<sup>9</sup> Refer to SEC file number S7-24-16, "Universal Proxies," Question 56, "Are there any concerns with the ability of proxy service providers to effectively implement the choices made on universal proxies? Are there any concerns with the ability of proxy service providers to prepare and distribute universal proxy cards or the associated voting instruction forms? For example, would the proposed rules lengthen proxy cards in contested elections such that placing all nominees on one card would be impractical? Are there ways that our proxy rules can address such concerns? For example, should the proxy rules require that director nominees be listed in columns on universal proxies?"

