

Memorandum

SEC Issues Interpretation Regarding Descriptions of Proposals on Proxy Cards

March 24, 2016

On March 22, 2016, the Division of Corporation Finance of the Securities and Exchange Commission (“SEC”) issued a Compliance and Disclosure Interpretation (“C&DI”) regarding the form of proxy requirements outlined in Rule 14a-4 under the Securities Exchange Act of 1934, as amended.¹ In particular, the C&DI relates to the requirement in Rule 14a-4(a)(3) that the form of proxy “identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders.”

In an effort to clarify “how specifically” a registrant must describe a shareholder proposal on its proxy card, the C&DI explains that, with regard to *both* management and shareholder proposals, the proxy card must “clearly identify and describe the specific action on which shareholders will be asked to vote.” The C&DI provides the following examples of descriptions the Division of Corporation Finance deems inadequate:

Proposal	Inadequate Description
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Management proposal to amend a company’s articles of incorporation to increase the number of authorized shares of common stock	“A proposal to amend our articles of incorporation”
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Shareholder proposal to amend a company’s bylaws to allow shareholders holding 10% of the company’s common stock to call a special meeting	“A shareholder proposal on special meetings”
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¹ See U.S. Securities and Exchange Commission, Division of Corporation Finance, Compliance and Disclosure Interpretations (Regarding Description Under Rule 14a-4(a)(3) of Rule 14a-8 Shareholder Proposals) (Mar. 22, 2016).

The C&DI adds that the “following descriptions of shareholder proposals also would not satisfy Rule 14a-4(a)(3):

- A shareholder proposal on executive compensation;
- A shareholder proposal on the environment;
- A shareholder proposal, if properly presented; and
- Shareholder proposal #3.”

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm’s Public Company Advisory Practice.

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