



## Proxy Season: Enhanced Confidential Voting Shareholder Proposals

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Multiple no-action requests have been submitted to the Securities and Exchange Commission (SEC) by companies in receipt of this shareholder proposal, and SEC responses are still pending. Companies have generally argued that the proposal is impermissibly vague and indefinite so as to be inherently misleading, is false and misleading, or deals with ordinary business operations. Omnicom Group Inc. took its opposition to the proposal to court. Verizon adopted a Policy on Interim Vote Tallies, which provides that it will, upon request, authorize Broadridge to provide interim voting tallies to certain shareholders conducting exempt solicitations. As a result, Verizon's no-action request also argues that the enhanced confidential voting proposal has been substantially implemented.

It is not clear whether Verizon's argument that it substantially implemented the proposal will prevail with the SEC, as Verizon's policy is aimed at "maintaining a level playing field" by providing voting information to certain shareholders, while the enhanced confidential voting proposal is aimed at restricting voting information from the company. On the other hand, Verizon's policy seems to align favorably with Institutional Shareholder Services' (ISS) Proxy Voting Disclosure, Confidentiality and Vote Tabulation policy. The ISS policy will evaluate proposals on a case-by-case basis for transparency, consistency and fairness in the proxy voting process. It will take into consideration factors such as the company's stated confidential voting policy (or other relevant policies) and whether it ensures a "level playing field" by providing shareholder proponents with equal access to vote information prior to the annual meeting, and also the company's vote standard for management and shareholder proposals and whether it ensures consistency and fairness in the proxy voting process and maintains the integrity of vote results.

Companies are no doubt anxiously awaiting the SEC's decision on whether these proposals can be excluded from their proxy statements. Regardless of the SEC's decision this year, it is likely not the last we will hear regarding these proposals, given the level of shareholder support for similar proposals at CenturyLink and Whole Foods.

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