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## SEC Issues CDI on Proxy Card Descriptions

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On March 22, 2016, the SEC’s Division of Corporation Finance issued a new Compliance and Disclosure Interpretation on the application of Exchange Act Rule 14a-4(a)(3) requiring that the form of proxy “identify clearly and impartially each separate matter intended to be acted upon.” In response to the following question: “How specifically must a registrant describe a Rule 14a-8 shareholder proposal on its proxy card?” the CDI, which also applies to management proposals, specifies the SEC’s expectation that “the proxy card should clearly identify and describe the specific action on which shareholders will be asked to vote.”

The CDI contains examples of proxy proposal descriptions that would be inadequate for purposes of satisfying the rule. Those examples note that it would not be appropriate to describe an amendment to increase the number of authorized shares of common

stock as “a proposal to amend the registrant’s articles of incorporation,” or to describe a bylaw amendment to permit shareholders holding 10 percent of a company’s common stock to call a special meeting as “a proposal on special meetings.” Based on those examples, it is clear that descriptions of shareholder or management proposals with reference only to the general topic to be voted on, without further detail and greater specificity, are among the types of proxy proposal descriptions that are clearly insufficient.

Though the CDI guidance is specific to the descriptions required on proxy cards, we encourage companies to use consistent descriptions of proposals throughout their proxy materials, including the notice of meeting, the notice of internet availability of proxy materials and voting instruction forms distributed to street name holders.

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