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### Corp Fin's Guidance on VIFs: An Unexpected Development from Universal Proxy



Early uses of the universal proxy card have led to one interesting development – new Corp Fin guidance regarding broker voting instruction forms (VIFs). VIFs are the way in which shareholders who hold their shares through a bank, broker or other intermediary instruct that intermediary how to complete the company's proxy card for their shares. Keir Gumbs, Chief Legal Officer at Broadridge, posted this [great blog](#) recently providing early insights on how the universal proxy card is changing proxy fight practices, including the new guidance on VIFs.

As described in that blog, Corp Fin's new guidance calls for VIFs to mirror instructions provided on the company's proxy card regarding instructions on how signed but unmarked, partially marked, or overmarked cards will be handled. For example, if the dissident shareholder soliciting proxies indicates in its proxy materials that an unmarked card will result in votes "For" the dissident's nominees and a subset of management's nominee (and "Withhold" on the other management nominees), the VIF should include those instructions as well.

Here are three key takeaways from Keir's blog:

1. This guidance regarding VIFs results in a different approach from how unmarked cards have been treated. In the past, Broadridge followed the NYSE's guidance regarding unsigned VIFs, and completed them in accordance with management's recommendations. The new approach can result in votes for dissident nominees, as long as the dissident's proxy materials are clear that this will be the result.
2. Another big difference from past practice is how "overmarked" VIFs will be handled. On a universal proxy card with 12 nominees and 11 seats up for election, if the VIF had a "For" vote marked for all 12 nominees, Broadridge would send the form to the bank or broker for further instruction from the investor. Under the new guidance, such a card would automatically be rewritten to follow the instructions specified by the soliciting party, which could mean votes "For" the dissident's nominees and "Withhold" on certain management nominees.

3. Despite the drastic changes in how votes will be recorded for unmarked, partially marked, and overmarked VIFs, the ultimate result of these changes is likely to be small. As reported in Keir's blog, typically less than 0.05% of share voted include overmarks.

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