UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

September 19, 2023

Maria Allen
Broadridge Financial Solutions, Inc.

Re: Broadridge Financial Solutions, Inc. (the "Company")
Incoming letter dated September 18, 2023

Dear Maria Allen:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its July 11, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

Broadridge

Ready for Next

July 11, 2023

VIA ELECTRONIC MAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

Broadridge Financial Solutions, Inc. (the "Company") hereby submits this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act") to request confirmation from the staff of the Division of Corporation Finance (the "Staff") that it will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "SEC" or "Commission") if the Company excludes a shareholder proposal (the "Proposal") submitted by James McRitchie (collectively with his designated representative, John Chevedden, the "Proponent") from the proxy materials for its 2023 annual meeting of shareholders. A copy of the Proposal, which requests that the Company provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings, and the cover letter to the Proposal are attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. We are simultaneously sending a copy of this letter to the Proponent as notice of the Company's intent to omit the Proposal from its 2023 proxy materials in accordance with Exchange Act Rule 14a-8(j). We take this opportunity to inform the Proponent that a copy of any correspondence he submits to the Commission or the Staff with respect to the Proposal should be provided concurrently to the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D, and request that a copy also be provided to the undersigned at the address below.

Broadridge Financial Solutions, Inc.
5 Dakota Drive
Lake Success, N.Y. 11042
516-472-5472

broadridge.com

THE PROPOSAL

The Proposal states:

> **Resolved**: James McRitchie and other shareholders request that the Board of Directors of Broadridge Financial Solutions initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings and that our company issue a brief report on current practices and options to address this issue.

BASIS FOR EXCLUSION

We request that the Staff concur in our view that the Company may exclude the Proposal from its 2023 proxy materials pursuant to (i) Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations and (ii) Rule 14a-8(i)(3) because the Proposal is so vague and indefinite so as to be materially false and misleading in violation of Rule 14a-9 under the Exchange Act.

ANALYSIS

I. The Proposal should be excluded under Rule 14a-8(i)(7) because it seeks to deal with a matter relating to the Company's ordinary business operations

Rule 14a-8(i)(7) permits the exclusion of a shareholder proposal from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." The Commission has stated that the purpose of the ordinary business exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Amendments to Rules on Shareholder Proposals*, SEC Rel. No. 34-40018 (May 21, 1998) (the "1998 Release").

A. The Proposal may be excluded under Rule 14a-8(i)(7) because it concerns the conduct of shareholder meetings, which relate to the Company's ordinary business operations

The sole focus of the Proposal is the conduct of the Company's annual meetings, which is a topic that the Staff has long recognized as an ordinary business matter. Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the 1998 Release, the term "ordinary business" refers to "matters that are not necessarily 'ordinary' in the common meaning of the word." Instead, the 1998 Release provides that the term is "rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.* The Commission then identified two central considerations that underlie this policy to determine whether the exclusion is appropriate. The first consideration

recognizes that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight". The second considers the degree to which the proposal "micromanages" the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

The Proposal requests that a "reasonable time for votes to be cast or changed after the final proposal is presented at the company's annual general meetings." The Proposal seeks to manage the conduct and procedures relating to annual meetings of shareholders, which are matters of the Company's ordinary business. Therefore, the Proposal is excludable under Rule 14a-8(i)(7).

B. Exclusion of the Proposal under Rule 14a-8(i)(7) would be consistent with other no-action letters relating to the conduct of annual meetings

The Staff has long recognized that the conduct of annual meetings is an ordinary business matter that is within the purview of the Company's management and board of directors. *See USA Technologies, Inc.* (Mar. 11, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned amending the bylaws to "include rules of conduct at all meetings of shareholders"); *Servotronics, Inc.* (Feb. 19, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a question-and-answer period at the company's annual meeting); *Mattel, Inc.* (Jan. 14, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the Annual Meeting"); *see also Smith & Wesson Brands. Inc./American Outdoor Brands Corporation* (June 25, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned adopting a corporate governance policy affirming the continuation of in-person annual meetings in addition to internet access to the meeting); *Bank of America Corp.* (Dec. 22, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that all shareholders be entitled to attend and speak at annual shareholder meetings); *Con-way, Inc.* (Jan. 22, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company broadcast future annual meetings over the Internet using webcast technology because the proposal "relates to the company's ordinary operations (i.e., shareholder relations and the conduct of annual meetings)"); *General Motors Corporation* (Mar. 15, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting certain disclosure regarding the company's solicitation of shareholder votes); *Citigroup Inc. (Jan. 14, 2004)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to prescribe, among other things, the amount of time each stockholder may speak and when such speaker may ask a follow-up question). As a general matter the Staff has declined to confer no-action relief on the basis that the conduct of annual meetings relates to a significant social policy only with respect to proposals that requested virtual access to shareholder meetings during the COVID-19 pandemic. *See Brinker International, Inc.* (Sept. 22, 2021) ("In light of technological progress and public health guidance in light of the COVID-19 pandemic, in our view the issue of shareholders' virtual access to annual and special shareholder meetings does not relate to the Company's ordinary business operations."); *Campbell Soup* (Sept. 22, 2021); *but see Target Corp.* (Apr. 9, 2021) (permitting exclusion under Rule 14a-

8(i)(7) of a proposal that would prohibit in-person meetings and require shareholder meetings to be held in a "zoom type format"). This exception does not apply to the Proposal and the Proposal does not otherwise implicate a significant social policy that would override the exclusion provided by Rule 14a-8(i)(7) for proposals relating to an issuer's ordinary business operations.

In addition to the foregoing proposals relating to the conduct of annual meetings, the Staff has consistently permitted the exclusion under Rule 14a-8(i)(7) of proposals that, like the Proposal, relate to the amount of time allocated for particular aspects of an annual meeting. *See Servotronics, Inc.* (Feb. 19, 2015); *Citigroup Inc.* (Feb. 7, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned a "reasonable amount of time before and after the annual meeting for shareholder dialogue with directors"); *AmSouth Bancorporation* (Jan. 15, 2002) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a questions and comments session prior to adjournment of each annual meeting for a maximum of thirty minutes because the proposal "relates to AmSouth's ordinary business operations (*i.e.*, specific amount of time allocated for shareholder discussion during the course of an annual meeting, of board answers to shareholder questions posed at the meeting)"); *PG&E Corp.* (Jan. 27, 2000) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned a more fulsome public discussion of concerns during the annual meeting because it relates to the company's ordinary business operations). Like these proposals, the Proposal seeks to impose restrictions on the conduct of the annual meeting by prescribing a period of time for particular items on the annual meeting agenda. These matters relate to the ordinary business of the Company, as reflected in the Company's bylaws, which provide that the order of business at all shareholder meetings shall be determined by the chair of the meeting unless changed by shareholders representing a majority of votes cast at such meeting. *See* Amended and Restated By-laws of Broadridge Financial Solutions, Inc., art. II, Section 2.14, *available at* https://www.sec.gov/Archives/edgar/data/1383312/000138331219000040/exhibit32arbylaws2019.htm.

In addition to proposals concerning the conduct and time dedicated for particular matters at annual meetings, the Staff also has permitted the exclusion of shareholder proposals that concern other aspects of annual meetings. *See Sportsman's Warehouse Holdings, Inc.* (Apr. 10, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adjourn the meeting to solicit additional proxies); *Interpublic Group of Companies, Inc.* (Jan. 26, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned monitoring of preliminary voting results before the annual meeting); *Ferro Corp.* (Jan. 6, 2017) (same); *L-3 Communications Holdings, Inc.* (Jan. 6, 2017) (same); *Praxair, Inc.* (Jan. 6, 2017) (same); *Northeast Utilities* (Mar. 3, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned "the date of shareholder meetings"); *Bank of America Corp.* (Feb. 16, 2006) (same); *The Walt Disney Co.* (Nov. 29, 2002) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned "procedures for adjourning the annual meeting"); *Niagara Mohawk Holdings* (Mar. 5, 2001) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned "setting aside an area for shareholder discussion at an annual meeting"); *The Gillette Company* (Feb. 2, 2001) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that concerned "procedures for presenting and discussing issues with shareholders during the course of an annual meeting"). For

these reasons, allowing the exclusion of the Proposal from the Company's proxy materials under Rule 14a-8(i)(7) would be fully consistent with the Staff's long-term approach to comparable proposals.

II. The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal "if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has consistently taken the position that vague and indefinite proposals are excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* Staff Legal Bulletin No. 14B (September 15, 2004); *see also Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion of a proposal where "any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal").

A. The Proposal is excludable under Rule 14a-8(i)(3) because it fails to define key terms

The Staff has allowed for the exclusion of proposals under Rule 14a-8(i)(3) where key terms of a proposal, regardless of their plain meaning, are undefined or defined in a manner that renders the proposal vague and indefinite. *See The Boeing Co.* (Feb. 23, 2021) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Philip Morris Int'l, Inc.* (Jan. 8, 2021) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company's "balance sheet be strengthened significantly," where it was unclear how the essential terms "strengthened" and "significantly" would apply to the company's balance sheet); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion under Rule 14a-8(i)(3) of a proposal recommending that the company "improve guiding principles of executive compensation"); *Ebay, Inc.* (April 10, 2019) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company "reform" executive compensation may be excluded from the company's proxy materials on the grounds that "neither the shareholders nor the company would be able to determine with any reasonable certainty the nature of the 'reform' the proposal was requesting"); *Pfizer Inc.* (Dec. 22, 2014, *recon. denied* Mar. 10, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the chairman be an independent director whose only "nontrivial professional, familial or financial connection to the company or its CEO is the directorship," because the scope of prohibited "connections" was unclear); *International Business Machines Corp.* (Jan. 13, 2010) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that directors take immediate corrective action regarding an executive compensation package); *General Motors Corp.* (Mar. 26, 2009) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company "eliminate all incentives for the CEOS [sic] and the Board of Directors"); *Prudential Financial Inc.* (Feb. 16, 2006) (permitting

exclusion under Rule 14a-8(i)(3) of a proposal requesting shareholder approval for certain "senior management incentive compensation programs"); *Puget Energy, Inc.* (Mar. 7, 2002) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting a policy of "improved corporate governance"); *Energy East Corp.* (Feb. 12, 2007) (permitting exclusion under Rule 14a-8(i)(3) of a proposal relating to executive compensation where key terms such as "benefits" and "peer group" were not defined); *The Coca Cola Company* (Jan. 30, 2002) (permitting exclusion under Rule 14a-8(i)(3) of a proposal regarding including "ordinary" persons on the board of directors where the proposal did not provide criteria as to what constitutes "ordinary") .

Here, the terms such as "appropriate changes" and "reasonable time" are inherently broad, vague and indefinite terms that are subject to a wide range of interpretation. In particular, it is unclear what "appropriate changes" the Proponent is seeking in the Company's governance documents or proxy statements. The phrase "reasonable time" could be subject to differing interpretations by the Company and shareholders voting on the Proposal and are inherently based on a number of factors, including the proposals being considered at a shareholder meeting, the number of attendees and whether there are any questions or debate regarding the proposals under consideration. Neither the Proposal nor the supporting statement provide any clarification regarding the criteria for determining what constitutes "reasonable time". The supporting statement mentions that "many companies . . . allowing little or no time for shareholders to vote after the presentation of the final proposal." It also includes survey data from 31 shareholder meetings (not including the Company's meeting) asserting that the time to vote varied from "0-10 seconds" to "2 minutes or more." It is not clear from the Proposal or supporting statement whether these periods, or any other period would constitute a "reasonable time" to vote.

As the Proposal and supporting statement do not provide any explanation or context for the meaning of these critical terms, which define the very basis of the requested report, shareholders would have no ability to make a reasonable assessment of the Proposal, and the Company would not be able to reasonably determine how to determine the "appropriate changes" to governance documents or proxy statements and how to set up "reasonable time" for vote if shareholders approve the Proposal. The Proposal should accordingly be excludable from the Company's proxy materials under Rule 14a-8(i)(3).

B. The Proposal is excludable under Rule 14a-8(i)(3) because it does not adequately inform the company of the actions necessary to implement the proposal

The Staff has permitted the exclusion under Rule 14a-8(i)(3) of proposals that do not adequately inform the company of the actions necessary to implement the proposal. *See Kroger Co.* (Mar. 19, 2004) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company prepare a sustainability report based on the Global Reporting Initiative's sustainability reporting guidelines, where the company argued that the proposal's "extremely brief and basic description of the voluminous and highly complex Guidelines" did not adequately inform the company of the actions necessary to implement the proposal). Additionally, the courts have also ruled on cases involving vague proposals, finding that "shareholders are entitled to

know precisely the breadth of the proposal on which they are asked to vote" and that a proposal may be excluded when "it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

In 2022 the Company implemented several practices at its annual meeting that were intended to provide shareholders with adequate time to question, debate and vote upon proposals brought before the annual meeting. In particular, the Company provided time following the reading of the proposals for shareholders in attendance to ask questions regarding the proposals to be voted upon. The meeting then featured a presentation from the Company's CEO regarding the Company's business, while the polls remained open for voting in order to provide time for shareholders attending the meeting to submit questions, vote or change their vote. From the time the Company opened the polls to the closing of the polls, over 10 minutes elapsed, with two reminders provided to shareholders during that time that the polls would be closing after the CEO's business presentation. Specific to the concern addressed in the Proposal, 6 minutes and 40 seconds elapsed at the Company's 2022 annual meeting between the time the last proposal was read and the closing of the polls. During this time, no questions were asked and four shareholders attending the meeting voted while the polls were open.

The Proposal implicitly critiques the conduct of the Company's 2022 annual meeting by requesting "appropriate changes" to provide "a reasonable time for votes to be cast or changed," but does not provide any guidance for management, the Company's directors or shareholders to understand what changes would be needed in order to satisfy the Proposal. In this regard, the Company believes that its existing procedures provide a reasonable time for questions to be asked, votes to be cast or changed and that it is unclear what changes, if any, would be appropriate in order to implement the Proposal. Such direction is not clear from the text of the Proposal or the supporting statement and the Proponent was unable to provide greater clarity to the Company in a conference held on July 5, 2023. Because the Proposal fails to clarify any further actions necessary for the Company to take to implement the Proposal it accordingly should be subject to exclusion under Rule 14a-8(i)(3).

CONCLUSION

Based on the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from its 2023 proxy materials under Rule 14a-8(i)(7) and 14a-8(i)(3).

* * * * *

Broadridge anticipates that the 2023 proxy materials will be filed on or about September 27, 2023. Accordingly, Broadridge would appreciate receiving the Staff's response to this no-action request by September 20, 2023.

If the Staff disagrees with Company's view that it can omit the Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. If the Staff has any questions regarding this request or requires additional information, please contact me at maria.allen@broadridge.com or (516) 472-5472.

Very truly yours,

Maria Allen

Maria Allen
Associate General Counsel and
Corporate Secretary

cc: John Chevedden

David B.H. Martin
Matthew C. Franker
Covington & Burling LLP

Exhibit A

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Broadridge Financial Solutions
5 Dakota Drive
Lake Success, New York 11042
CorporateSecretary@broadridge.com

Dear Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, for a vote at the next annual shareholder meeting requesting Time to Vote, as specified. I intend and pledge to continue to hold the requisite amount of securities required under SEC rules until after the date of that meeting.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company's representative via phone or Zoom on June 8, at 12:00 pm or 12:30 pm Pacific or at another day or time that is mutually convenient.

This letter confirms that I am delegating John Chevedden to act as my agent regarding including presentation at the forthcoming shareholder meeting but not regarding submission, negotiation, or modification, which require my approval. Please include Mr. Chevedden in future communications regarding my rule 14a-8 proposal [redacted] facilitate prompt communication.

Avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [redacted]. I will then request the required letter from my broker and submit it to you.

Per the most recent SEC SLB 14L https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I am requesting acknowledgment of receipt of this shareholder proposal.

Sincerely,

May 23, 2023

James McRitchie

Date

[BR: Rule 14a-8 Proposal, May 23, 2023
[This line and any line above it – *Not* for publication.]

Proposal [4*] – Allow Time to Vote

Resolved

James McRitchie and other shareholders request that the Board of Directors of Broadridge Financial Solutions initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the company's annual general meetings and that our company issue a brief report on current practices and options to address this issue.

Supporting Statement

The annual general meeting (AGM) is the single venue where shareholders gather to deliberate and vote both on board and shareholder proposals. The AGM allows shareholders to speak persuasively to fellow shareholders, the board, and management. Shareholder communications during AGMs provide a critical opportunity for deliberation and debate.

Therefore, it is only reasonable to expect that shareholders be given time to listen to the presentations and consider how they want to cast or change their vote at the meeting. In addition, SEC Rule 14a-8(h)(3) provides that if a proponent fails to present their proposal, "without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years."

Yet, many companies treat the process as an empty ritual, allowing little or no time for shareholders to vote after the presentation of the final proposal.

The Interfaith Center on Corporate Responsibility collected data from 31 annual company meetings attended by its members in 2022. Their survey showed 10 out of 31 companies allowed 0-10 seconds to vote at annual meetings after proposals were presented, 5 allowed up to 30 seconds, 6 allowed 50-60 seconds, and 10 allowed 2 minutes or more.[1]

[1] https://www.corpgov.net/2022/09/no-time-to-vote/

Carl Hagberg, a well-known inspector of elections, suggests that after all proposals have been introduced, companies announce that polls will remain open for 10 more minutes during a general discussion or question-and-answer period "to allow voters who have not yet voted or who wish to change their votes online to do so."[2]

Failure to provide investors adequate time to vote could negatively affect investor perception of the company and its stock value since fair corporate suffrage is a fundamental right of shareholders.

We urge a vote FOR this shareholder proposal to ensure adequate time to consider meeting presentations.

To Enhance Shareholder Value, Vote FOR
Allow Time to Vote – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference: SEC Staff Legal Bulletin No. 14I (CF)[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

[2] Carl T. Hagberg & Associates, How and When to Properly Open and Close the Polls, The Shareholder Service Optimizer, Second Quarter 2022 https://optimizeronline.com/how-and-when-to-properly-open-and-close-the-polls/

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email to [redacted]

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Maria.Allen@broadridge.com, dmartin@cov.com, mfranker@cov.com

July 25, 2023

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

To Whom It May Concern:

This letter is in response to a July 11, 2023, letter by Maria Allen, Associate General Counsel and Corporate Secretary of Broadridge Financial Solutions, Inc (the "Company" or "Broadridge").

Ms. Allen asserts that my shareholder proposal ("Proposal") can be omitted because it deals with a matter relating to the company's ordinary business operations and is impermissibly vague.

The proposal asks the Company "to initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings and that our company issue a brief report on current practices and options to address this issue."

We review both of Ms. Allen's assertions in turn below.

Company Assertion: The Proposal may be excluded under Rule 14a-8(i)(7) because it concerns the conduct of shareholder meetings related to the Company's ordinary business operations.

Background: If the company's bylaws do not expressly prohibit it, there is generally no legal requirement under Delaware law that a company must keep the polls open for a time period that allows shareholders to consider the information presented at the annual meeting. For example, DEL. CODE 8, § 231

> (c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

Article 2.11 of Company bylaws gives sole discretion of when to close the polls to the person presiding at the meeting
(https://www.sec.gov/Archives/edgar/data/1383312/000119312507068899/dex43.htm):

> The date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting.

Likewise, Delaware law allows companies to have a wide variety of governance bylaws, such as provisions allowing a split or combined CEO and chair. However, the SEC has not traditionally considered shareholder proposals on such topics excludable under "ordinary business," nor has it found ensuring shareholder voting rights an excludable topic.

Citations: The Company cites no-action letters relating to the conduct of annual meetings, none of which dealt with the issue of informed voting. Additionally, almost all of these were dated prior to November 3, 2021, when the SEC published Staff Legal Bulletin No. 14L (CF) ("14L"). The single no-action letter cited by the Company after the issuance of 14L was *Sportsman's Warehouse Holdings, Inc.* (Apr. 10, 2023) ("Sportsman's").

With regard to Sportsman's, unlike my Proposal, Sportsman's was not cast in precatory language. Sportsman's would have usurped the Board's discretion provided under the DGCL and the Company's governance documents to manage the functions of the company, regardless of whether the Board determined that the actions requested were in the company's interest. Consequently, because that proposal did not allow the Board to exercise its judgment in determining whether to adjourn the Company's 2023 annual meeting of stockholders, a matter clearly within the Board's discretion and purview, Sportsman's Warehouse Holdings was granted a no-action letter.

The current Proposal is precatory and leaves much discretion to Broadridge.

Rebuttal: The "ordinary business" exclusion rests on two central considerations. "The first relates to the proposal's subject matter and goes to the notion that certain matters should not be subject to direct shareholder oversight because they are so fundamental to management's ability to run the day-to-day affairs of a company.[9] The second relates to the degree to which the proposal "micromanages" the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."[10]" (https://www.sec.gov/news/speech/jones-cii-2022-03-08#_ftn9, Renee Jones, former Director of the SEC's Division of Corporate Finance)

The annual meeting is not part of day-to-day business operations but is an annual exercise in corporate governance in which shareholders play a crucial role. Allowing "a reasonable time for votes to be cast or changed after the final proposal is presented" is not a matter "of a complex nature," such that shareholders cannot make an informed judgment. It is a matter of practicing good corporate governance, ensuring that shareholders can vote after considering all relevant information provided to meeting attendees.

Under Delaware law, the board of directors is responsible for managing the affairs of the corporation. The composition and structure of the board, including the roles of chairman and lead director, are typically determined by the company's bylaws and corporate governance guidelines. These documents may establish requirements for independence, committee appointments, and leadership roles within the board. However, few companies would argue

today that shareholder proposals requesting an independent board chairman or a lead director deal with "ordinary business."

Corporate governance practices evolve, and individual companies may adopt their own guidelines or follow best practices that recommend allowing a reasonable time for shareholders to cast their vote or change their vote after all proposals have been presented at the annual meeting. Shareholders should not be denied the right to submit proposals requesting that companies adopt policies that recognize that presentations of proposals at annual meetings can provide shareholders with additional information they may wish to consider in casting their votes. Closing the polls before or immediately following presentations denies shareholders that right.

The proposal requests the "Board of Directors of Broadridge Financial Solutions initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings." The request does not unduly limit the discretion of the board, since there is wide opinion of what time is considered "reasonable" but there is little argument that allowing *no* time to vote after the last proposal is presented is unreasonable.

At the 2020 Broadridge annual meeting, voting was cut off immediately after I presented my proposal on political disclosures, leaving no time for anyone in attendance to vote or change their vote on political contributions disclosures. I checked in with Doug Chia, a former corporate secretary at Johnson & Johnson, to see if this was a common practice. He responded in part as follows:

> The fact is that most (almost all?) companies close the polls right after all items of business have been presented. At J&J, we gave shareholders another five minutes to vote or change their votes. Intel left the polls open until the end of the Q&A session, which is probably the "right" way to do it, but that is extremely rare from what I have seen at large companies…
>
> While I hate when someone's answer to the question "Why do we do it this way?" is "Because *everyone* does it this way" or "Because we've *always* done it this way," that's all I've got. Sorry, guys!

Liz Dunchee, a prominent attorney with Fredrickson, notes (*Online Voting: Best Practices for Opening & Closing the Polls*, http://www.thecorporatecounsel.net/member/blogs/proxy/2022/08/online-voting-best-practices-for-opening-closing-the-polls.html), allowing time to vote has become increasingly important:

> Now that virtual & hybrid meetings are (likely) here to stay, one of the procedural wrinkles that's come to light is, how long do you need to leave the polls open? The pause to allow people to change their votes probably needs to be lengthier than it would be for in-person, because people can't simply raise their hand to show they're filling out a new ballot. It takes more than mere seconds to change a ballot online – and management can't see that attendees are working on it.

Carl & Peder Hagberg, providers of annual meeting services, wrote (https://optimizeronline.com/wp-

content/uploads/VOLUME_28_NUMBER_2.pdf?mc_cid=cecadccb5a&mc_eid=09d4116ec8) the following:

> Imagine our consternation when we reviewed the script for an upcoming Meeting at a major company - with eight proposals on the agenda - that said, "We will pause for five seconds to allow you to vote or change your vote online." Yikes! While yes, five seconds of silence can seem like an eternity, it is physically impossible to review and potentially change one's votes at a VSM in a mere five seconds. What to do??? Here's what we came up with - and what we'd recommend as the "best practice" for opening and closing the polls where there is online voting:
>
> - Declare that "the polls are now open for voting" when the Meeting is called to order - or, at the very latest, when it is time to begin the introduction of all proposals on the ballot, i.e., "the official business of the meeting."
> - Our own view is that the "best practice" is to introduce proposals one-by-one - and to ask if there is any discussion, which most of the time these days is no - but if so, to hear it then and there. If there is any discussion, allow a brief pause (a few seconds should be fine here) for voters to amend their votes if they wish to, before moving to the next item.
> - When all the proposals have been introduced, move to the General Discussion Period - and announce that the polls will be open for 10 more minutes "to allow voters who have not yet voted or who wish to change their votes online to do so." Yes, a few holders may have to 'multi-task' but so be it, we say.
> - At eight minutes into the Q&A provide "fair warning" that the polls will officially close in two minutes.
> - If at 10 minutes into the Q&A there are still questions coming in you might consider a "last an final warning" that the polls will close - and perhaps allowing one or two extra minutes if your own schedule permits before closing the polls and making final remarks, thanking attendees and declaring the Meeting "concluded" ... But a ten-minute period for online voting, once all the proposals have been introduced, amply meets our own "Inspector's sniff-test" for fairness to attendees and should be fine with shareholders and shareholder proponents alike.

Although the Company admits, it took specific measures to ensure shareholders had time to vote after the last proposal was presented and before closing the polls at its 2022 meeting, the Company implicitly reserves the right to revert to its behavior in 2020. They seek to deny shareholders an opportunity to request that the time allowed to vote be studied and that parameters adopted by the board be announced in proxy statements or governance documents.

The SEC allows companies to penalize proponents severely if they fail to present their proposals. However, presenting proposals is an otherwise meaningless exercise if no one can vote or change their vote based on what is presented.

As the SEC noted in Release No. 34-87458 (Nov. 5, 2019), the shareholder proposal rule "facilitates shareholders' traditional ability under state law to present their own proposals for consideration *at* a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals."[5] (my emphasis) "At" the meeting has different meaning than "before" the meeting. If the rule is to facilitate *consideration* at the meeting, voting must be allowed *after* consideration is given to all the information on the

proposals. Shareholders do not know what relevant information will be provided by a proposal's proponent or by management until such presentations are completed.

Proposals at annual meetings are presented so that shareholders can *consider* and vote on them. If their request to the SEC is granted, the Company and many other companies may find it advantageous to close the polls whenever they want, even before proposals are presented. Through its no-action request, Broadridge seeks to reduce annual meetings to meaningless exercises that could be fulfilled by simply playing a recording and restricting live voting to a few seconds at the beginning of the meeting.

This case involves a dispute over the desire of shareholders to be able to exercise their fundamental right to vote after all relevant information has been provided. It does not involve the exercise of business judgment, the corporation's power over its property, or with respect to its rights or obligations; rather, it involves allocation, between shareholders as a class and the board, of effective power with respect to the corporation's governance.

Company Assertion: The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague. The company cites several cases where Staff agreed proposals were "vague and indefinite."

Here is the heart of the Company's argument:

> In 2022 the Company implemented several practices at its annual meeting that were intended to provide shareholders with adequate time to question, debate and vote upon proposals brought before the annual meeting. In particular, the Company provided time following the reading of the proposals for shareholders in attendance to ask questions regarding the proposals to be voted upon. The meeting then featured a presentation from the Company's CEO regarding the Company's business, while the polls remained open for voting in order to provide time for shareholders attending the meeting to submit questions, vote or change their vote… Specific to the concern addressed in the Proposal, 6 minutes and 40 seconds elapsed at the Company's 2022 annual meeting between the time the last proposal was read and the closing of the polls. During this time, no questions were asked and four shareholders attending the meeting voted while the polls were open.
>
> The Proposal implicitly critiques the conduct of the Company's 2022 annual meeting by requesting "appropriate changes" to provide "a reasonable time for votes to be cast or changed," but does not provide any guidance for management, the Company's directors or shareholders to understand what changes would be needed in order to satisfy the Proposal…

Rebuttal:

The Company is unduly defensive. The Proposal does not "implicitly critique(s) the conduct of the Company's 2022 meeting." It seeks to avoid reversion to conduct displayed by the Company at its 2020 meeting when it prohibited shareholders from voting after considering the information presented.

As indicated previously, there are differences of opinion of what time is considered a "reasonable" amount of time. Still, there is little argument that allowing *no* time to vote after the

last proposal is presented is unreasonable. To my knowledge, no one has criticized Broadridge for closing its polls too early at its 2022 meeting.

Broadridge has studied many issues at virtual shareholder meetings and has helped develop common practices and standards. They can do the same for the issue of how much time shareholders should have to consider the information provided by presentations before closing the polls.

If Broadridge studies the issue, writes a brief report on practices/options, and publicly announces its polling practices in advance of its meeting, directors are likely to choose to avoid the criticism they faced in 2020. Broadridge is much more likely to provide a reasonable amount of time for votes to be cast or changed after the final proposal is presented, as they did at the 2022 meeting if the proposal is allowed to stand than it would be if the SEC issues a no-action letter.

Broadridge is a Key Influencer in the Conduct of Virtual Shareholder Meetings

It is worth noting that Broadridge is a key provider of services to companies holding virtual shareholder meetings and has been intimately involved in issuing two reports providing best practices and guidelines.

Guidelines for protecting and enhancing online shareholder participation in annual meetings (https://www.broadridge.com/_assets/pdf/broadridge-guidelines-for-protecting-and-enhancing-online-shareholder-participation-in-annual-meetings.pdf), prepared in 2012 advises that companies establish "Specific and reasonable time guidelines for questions asked of management (e.g., five minutes for shareholders presenting proposals and two minutes for general questions)."

No advice was provided on how long to leave polls open or reminding companies that companies incorporated in Delaware have a duty to announce "the time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting."

However, the report did include the following: "The principles outlined below are *not* intended to simply reproduce in-person meetings through technology. Instead, they are intended to leverage technology in a way that will *increase* shareholder participation, engagement, and *voting* at annual meetings." (My emphasis) How does Broadridge reconcile its position that online meetings will increase voting with its no-action request, which implies it should be free to close the polls whenever it wants without any input from shareholders?

The *Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings* (https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf) advised that companies "Provide a prominently visible and simple mechanism on the main VSM page for shareholders to vote their shares (and change their votes if desired) during the time the polls are open." Even though the report states that "Voting is a shareholder's most important and powerful right" and "It is essential that shareholders have all material information needed to make a voting decision," no advice was provided on how long to leave polls open so that shareholders could consider "all the material information" offered prior to the close of voting.

Again, it is impossible to reconcile the two positions. In its public reports, Broadridge advocates that shareholders should have all the material information needed before voting. In its no-action request, Broadridge argues voting matters “relate to the ordinary business of the Company, as reflected in the Company’s bylaws, which provide that the order of business at all shareholder meetings shall be determined by the chair of the meeting *unless changed by shareholders representing a majority of votes cast at such meeting*.” (my emphasis)

Of course, shareholders cannot influence the order of business if they are denied the right to vote on that issue.

Conclusion

Proposals at annual meetings are presented so that shareholders can consider the information provided and then vote. Suppose the Company’s request to the SEC is granted. In that case, Staff will essentially sanction the Company's opinion that shareholders have no right to request that polls remain open until they can consider the information presented.

Indeed, the Company’s logic would even bar shareholders from voting on a proposal that requests the Company not close the polls *before* proposals are presented. Through its no-action request, Broadridge seeks to reduce annual meetings to meaningless exercises.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Broadridge on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach James McRitchie by emailing [redacted]

Sincerely,

James McRitchie
Shareholder Advocate

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel net

August 8, 2023
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Broadridge Financial Solutions, Inc. regarding allowing time for voting in the AGM on Behalf of James McRitchie

Ladies and Gentlemen:

James McRitchie (the "Proponent") is beneficial owner of common stock of Broadridge Financial Solutions, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. The Company submitted a no action request dated July 11, 2023 ("Company Letter") to the Securities and Exchange Commission through Maria Allen, Associate General Counsel and Corporate Secretary. James McRitchie previously responded to the no action request.

Subsequently, Mr. McRitchie hired me to examine the record of this no action request and to provide additional legal observations to the Staff. This letter contains those observations, and a copy of this letter is being emailed concurrently to Maria Allen.

The Proposal addresses a fundamental governance issue, not ordinary business

The Proposal addresses a fundamental issue of corporate governance that is central to the shareholder franchise and the relationship between shareholders and the company.

While the question of whether shareholders have sufficient time to vote after hearing presentations from the shareholders and management regarding shareholder proposals might seem like it is just about discretionary "time allocations" in the meeting, **it addresses a question of whether, in this increasingly virtual era, the corporate annual meeting is an actual interactive forum for shareholder deliberation.**

A new era for shareholder meetings

The history of shareholder meetings and shareholder deliberation can be reasonably divided into three eras.

In the first era, prior to the innovation of proxy voting, the shareholder meeting culminated with shareholders present in the face-to-face meeting casting their votes in response to arguments presented in the meeting.

In the second era, as proxy voting has become a norm, and supported by SEC protective rules ensuring that investors are adequately informed of the issues to be debated in the meeting, the volume of voting gravitated towards most votes being cast remotely, through the proxy process and ultimately through online voting vehicles including those supported by Broadridge. Relatively few shareholders attended the physical meetings and the norm of in-meeting voting devolved into an almost insignificant part of the corporate governance process, especially given the recent adoption of universal proxy rules.

In the third era, which began during the recent Covid pandemic, virtual attendance in shareholder meetings became a practical opportunity. Unlike the second era, in this new third era, technology has enabled broad shareholder attendance in the corporate annual meeting, with the possibility of shareholder meetings becoming a revitalized and engaging real-time forum for shareholder engagement with the CEO and board of the company, a real-time exchange of views, and **the opportunity for shareholders to consider the arguments presented and to cast their votes accordingly**.

The presentation of proposals at the shareholder meeting would no longer be viewed as a formality (as investors would have an opportunity to vote after hearing the presentations, which may rebut statements made in the proxy), but instead as an opportunity for debate and deliberation. Virtual technology has thus enabled a new era with the opportunity for profoundly expanded shareholder engagement, and a real-time engagement process that culminates in many shareholders listening to both sides of the arguments and then casting their votes accordingly. The advent of virtual or hybrid (virtual and in person) meetings offers the opportunity for an enlivened civic culture of shareholder democracy that is enabled by the virtual technology, and the possibility of shareholder meetings that more shareholders would reasonably want to participate and vote in.

As the proponent noted in his initial no action response, this is consistent with the logic of "presenting the proposal in the meeting." A shareholder meeting implies participation, deliberation, and voting. Today what we have is cognitive dissonance – a meeting without the opportunity for genuine shareholder deliberation. It is of utmost interest to shareholders to ensure their opportunity to deliberate and vote in the meeting, a matter of essential corporate

governance. Importantly, the current shareholder proposal identifies a current limitation that prevents this third era of corporate governance from being made real. To the extent that shareholders are not allowed time to listen and decide, they must actually cast their votes before the presentations in the meeting. Therefore, the potential for this third era to emerge is dependent on innovation, such as the proponent's proposal, being widely adopted by corporations.

Common sense guidance from corporate governance experts ratifies the importance of this policy innovation.

Materials in Jim McRitchie's initial response letter of July 25, 2023 demonstrated that the concern he is raising with his proposal is a common sense and fundamental governance issue, and not merely a logistical question reserved to board or management. For instance, in his letter he noted that Carl & Peder Hagberg, providers of annual meeting services, reviewed the script for an annual meeting of a company and were surprised to discover that the company intended to provide five seconds for online voting: "it is physically impossible to review and potentially change one's votes at a VSM [virtual shareholder meeting] in a mere five seconds."[1]

The Hagbergs provided recommendations for best practice:

- When all the proposals have been introduced, move to the General Discussion Period and announce that the polls will be open for 10 more minutes "to allow voters who have not yet voted or who wish to change their votes online to do so."
- At eight minutes into the Q&A provide "fair warning" that the polls will officially close in two minutes.

They noted further that: …" a ten-minute period for online voting, once all the proposals have been introduced, amply meets our own "Inspector's sniff-test" for fairness to attendees and should be fine with shareholders and shareholder proponents alike."

Similarly, Liz Dunchee, a prominent attorney with Fredrickson, notes that allowing time to vote has become increasingly important in the virtual and hybrid meetings:

> Now that virtual & hybrid meetings are (likely) here to stay, one of the procedural wrinkles that's come to light is, how long do you need to leave the polls open? The pause to allow people to change their votes probably needs to be lengthier than it would be for in-person, because people can't simply raise their hand to show they're filling out a new ballot. It takes more than mere seconds to change a ballot online -- and management can't see that attendees are working on it.[2]

[1] https://optimizeronline.com/wp-content/uploads/VOLUME_28_NUMBER_2.pdf?mc_cid=cecadccb5a&mc_eid=09d4116ec8.

[2] Online Voting: Best Practices for Opening & Closing the Polls https://www.thecorporatecounsel.net/member/blogs/proxy/2022/08/online-voting-best-practices-for-opening-closing-the-polls.html

In addition to the materials in the Proponent's initial letter, it should be noted that Broadridge's own guidance on shareholder meetings, the Annual Meeting Handbook[3] contains this recommendation for meeting scripts:

> Pro Tip: Build in a reasonable pause in the script following the presentation of the proposals before closing the polls to allow shareholders to vote or change their vote (up to 10 minutes depending on the number and complexity of the proposals).

The Proposal does not address ordinary business

The Company Letter asserts that the proposal addresses ordinary business and cites to numerous excluded proposals that attempted to prescribe specific mechanisms for the conduct of the meeting.

However, the current proposal is distinguishable from prior proposals addressing mere minutia of the conduct of annual meetings. Instead, it goes to a fundamental governance concern in this third era of corporate governance: will the deliberative norm of meetings be made real?

Thus, in the current context, the proposal is distinguishable from prior ordinary business exclusions in, for instance, *USA Technologies, Inc.* (Mar. 11, 2016) (permitting exclusion under Rule 14a-8(i)(7) adding rules of conduct to bylaws for meetings of shareholders); *Servotronics, Inc.* (Feb. 19, 2015) (requesting a question-and-answer period at the company's annual meeting); *Mattel, Inc.* (Jan. 14, 2014) (requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the Annual Meeting"); *Citigroup Inc. (Jan. 14, 2004)* (seeking to prescribe, among other things, the amount of time each stockholder may speak and when such speaker may ask a follow-up question).; *PG&E Corp.* (Jan. 27, 2000) (more fulsome public discussion of concerns during the annual meeting because it relates to the company's ordinary business operations).

Nor is the proposal like the excluded proposal in *Target Corp.* (Apr. 9, 2021) which sought to micromanage the approach of a virtual meeting, to require that such meetings "be held in zoom type format in which all participants can be heard and seen via their internet connected devices. Participants include shareholders registered for meeting attendance, and Target associates."

In contrast, the current proposal does not micromanage company decisions, but only flexibly requests that the Company allow adequate time for shareholders to vote after the proposals have been presented. The question of how much time, and how this is carried out, remains in the discretion of the board and management.

***Brinker and Campbell Soup* decisions are not necessarily distinguishable**

[3] https://www.broadridge.com/resource/annual-meeting-handbook

The Company Letter cites the *Brinker* and *Campbell Soup* as distinguishable because they occurred during the Covid era, a special circumstance that added a particular argument for virtual meetings. The proposals requested the Company to develop and adopt a policy, and amend its governing documents as necessary, to ensure that its future annual and special shareholder meetings will be held either in whole or in part through virtual means.

The proponent in the *Brinker* no action request wrote a detailed discussion of the importance of virtual meetings which included the pandemic but also discussed how the proposal:

> would further "various company social and sustainability policies," such as inclusiveness, equity, and environmental benefits. The Company argues that these factors do not raise a policy issue, but only state why "providing a means for virtual attendance is desirable or advantageous." But such an argument does not resolve whether a significant policy exists. Maximizing shareholder value and reducing greenhouse gas emissions are both desirable and advantageous, yet it can hardly be disputed that the former is simply an ordinary business issue, while the latter implicates a significant policy…
>
> Importantly, the Company makes no attempt to dispute that the Proposal does, in fact, involve issues of public health, of shareholder inclusiveness and equity, or that it furthers the Company's energy and emissions reduction goals. Instead, the Company just summarily states, without a board analysis or substantive discussion, that none of the policy issues in the Proposal--which the Company recognizes relate to health, inclusiveness, and sustainability-- are "issues of significance to the Company for purposes of Rule 14a-8(i)(7)."

The proponent also noted that virtual meetings are aligned with the company's environmental commitments — to "minimize or eliminate energy and emissions associated with the transportation and physical hosting requirements of in-person meetings."

Notably, the Staff rationale for denying the no action request extended <u>beyond the pandemic</u> for transcending ordinary business noted a twofold rationale "In light of technological progress <u>and</u> public health guidance in light of the COVID-19 pandemic, in our view the issue of shareholders' virtual access to annual and special shareholder meetings does not relate to the Company's ordinary business operations." [emphasis added]

<u>The Proposal is neither vague nor misleading</u>

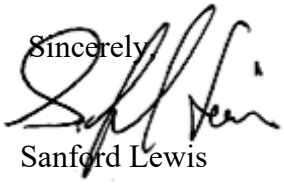
Moreover, the arguments regarding vagueness amount to a complaint about the flexibility provided to board and management to exercise discretion in determining the correct amount of time to be allowed. "Appropriate changes" and "reasonable time" are not vague in this context. The thrust of the proposal is clear as are the possible solutions. Moreover, Broadridge is an expert in this arena. If anyone has the expertise to assess what is appropriate and reasonable to address these clearly identified governance failures, the Company can do so. But it is neither

ordinary business nor vague to ask the Company to do so.

Conclusion

As a result of the pandemic, we have now entered the new third era of corporate annual meetings in which the opportunity for virtual participation is likely to be a new norm of corporate governance. In this new era, however, the contradictory conduct of meetings that does not allow an actual interactive experience of meeting participants – denial of the opportunity to take in the deliberative debate and then to decide and vote – represents a significant corporate governance contradiction and challenge to the Company. For these reasons, it is clear that the Proposal addresses a significant corporate governance issue that transcends ordinary business and does not micromanage. Nor is it vague. In short, the company has not provided a basis for excluding the proposal.

Sincerely,



Sanford Lewis

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Maria.Allen@broadridge.com, dmartin@cov.com, mfranker@cov.com, gina@pei.group, sanfordlewis@strategiccounsel.net

August 10, 2023

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

To Whom It May Concern:

This letter supplements my July 25 response and that of my legal counsel, Sanford Lewis on August 8 to a July 11, 2023, letter by Maria Allen, Associate General Counsel and Corporate Secretary of Broadridge Financial Solutions, Inc (the "Company" or “Broadridge”).

Ms. Allen asserts that my shareholder proposal ("Proposal") can be omitted because it deals with a matter relating to the company’s ordinary business operations and is impermissibly vague.

Although I raised the point below in my earlier response, I hope to make my point more explicit here by more fully quoting the SEC.

As the SEC noted in Release No. 34-87458 (Nov. 5, 2019), “Rule 14a-8 enables shareholder-proponents to easily present their proposals to all other shareholders, and to have proxies solicited for their proposals, at little or no expense to themselves. The rule, the concept of which was first adopted by the Commission in 1942, thus facilitates shareholders’ traditional ability under state law to present their own proposals **for consideration at** a company’s annual or special meeting, and it facilitates the ability of all shareholders to **consider and vote** on such proposals.” [https://www.sec.gov/files/rules/proposed/2019/34-87458.pdf, page 6] (my emphasis)

“At” the meeting has a different meaning than “before” the meeting. If the rule is to facilitate **consideration *at* the meeting**, voting must be allowed ***after* consideration is given** to all the information on the proposals. That includes presentations of board and shareholder proposals. Significantly, shareholder presentations may rebut the board’s opposition statement, which is included in the proxy. Additionally, shareholders need time to consider any questions on proposals raised at the meeting and any responses provided. Shareholders do not know what relevant information will be provided at the meeting until such presentations and any questions and answers on proposals are completed.

SEC Chairman Ganson Purcell, provided the following explanation for the initial Commission rules requiring the inclusion of shareholder proposals in company proxy materials: “We give [a stockholder] the right in the rules to put his proposal before all of his fellow stockholders along with all other proposals . . . so that they can see then what they are and vote accordingly. . . . The rights that we are endeavoring to assure to the stockholders are those rights that he has traditionally had under State law, to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on.” [Securit[ies] and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce, 78th Cong., 1st Sess. 17–19 (1943), cited in footnote 5, https://www.sec.gov/files/rules/proposed/2019/34-87458.pdf]

Implicit in Chairman Purcell’s pronouncements in 1943 and explicit in the SEC’s own 2019 rulemaking is the need to facilitate **consideration** of proposals **at** the meetings. According to the Oxford dictionary, “consider” literally means to “think carefully about (something), typically before making a decision.” “Consideration” means careful thought, ***typically over a period of time***. (my emphasis) Proposals at annual meetings are presented so that shareholders can ***consider and vote*** on them. That has been the premise of SEC’s rules since 1943.

If the Broadridge request is granted, the SEC would abrogate the explicit language and intent of prior rulemakings on Rule 14a-8 and its predecessor rules since 1943. Broadridge and many other companies may then find it advantageous to close the polls even before proposals are presented. Granting the no-action request could reduce annual meetings to a meaningless exercise.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Broadridge on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach James McRitchie by emailing [redacted]

Sincerely,

James McRitchie
Shareholder Advocate

Broadridge

Ready for Next

August 22, 2023

VIA ELECTRONIC MAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

Broadridge Financial Solutions, Inc. (the "Company") hereby submits this letter in furtherance of its request for no-action relief, dated July 11, 2023 (the "No-Action Request"), from the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC") with respect to the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie (collectively with his designated representative, John Chevedden, the "Proponent"). The Company is furnishing this letter to the Staff to rebut certain statements contained in supplemental correspondence submitted by the Proponent on July 25, 2023 (the "July 25 Letter") and August 10, 2023 (the "August 10 Letter"), as well as a letter submitted on the Proponent's behalf by Sanford Lewis on August 8, 2023 (the "August 8 Letter" and, collectively with July 25 Letter and August 10 Letter, the "Supplemental Correspondence"), which are collectively attached as Exhibit A, and to reiterate and expand upon its argument that the Proposal may be excluded from the Company's proxy materials for its 2023 annual meeting of shareholders pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(3) under the Securities Exchange Act of 1934.

Although the Company does not believe that a point-by-point rebuttal of the Supplemental Correspondence is necessary given the clarity of the No-Action Request and the Staff's longstanding position with respect to shareholder proposals that relate to the conduct of annual meetings, the Company wishes to raise one new point and respond to three mischaracterizations included in the Supplemental Correspondence.

1. The Proposal Requests a Report Related to the Company's Ordinary Business

As discussed in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7) pursuant to the Staff's longstanding position that proposals relating to the conduct of annual meetings of shareholders are matters of ordinary business. In addition, the July 25 Letter and the Proponent's other statements make it clear that the report requested by the Proposal

Broadridge Financial Solutions, Inc.
5 Dakota Drive
Lake Success, N.Y. 11042
516-472-5472

broadridge.com

does not relate to "current practices and options" *for the Company* to provide a reasonable time for votes to be cast or changed *at its annual meetings*, but rather to current practices available to the Company's clients that utilize the Company's virtual meeting platform or to pubic companies generally. Proposals relating to an issuer's products and services are subject to exclusion under Rule 14a-8(i)(7) as relating to the issuer's ordinary business.

Following the submission of the No-Action Request, the Proponent sent an email to the Company on July 18, 2023 that clearly indicated that the report requested by the Proposal relates to client or industry practice, rather than with respect to the Company's practices on the Proposal's topic. In particular, such correspondence states "HOWEVER, I also want Broadridge to meet the proposal's request to publicly report on current practices and options to address the issue of allowing time to vote" and, importantly, "I believe [Broadridge] is in the best position to report on current practices and to ensure shareholders have a reasonable amount of time to vote after all proposals have been presented. A copy of the Proponent's July 18, 2023 email is attached hereto as Exhibit B. The Proponent's subsequent correspondence with the Staff confirms that the requested report does not relate to the conduct of the Company's annual meetings, as the July 25 Letter notes that "Broadridge is a key provider of services to companies holding virtual shareholder meetings and has been intimately involved in issuing two reports providing best practices and guidelines." The July 25 Letter further argues that "Broadridge has studied many issues at virtual meetings . . . [and] can do the same for the issue of how much time shareholders should have to consider the information provided by presentations before closing the polls." The July 25 Letter also appears to criticize the *Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings*, in which the Company participated, because "no advice was provided on how long to leave polls open so that shareholders could consider 'all the material information' offered prior to the close of voting."[1]

The SEC has noted that the "ordinary business" exclusion is "rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." *See Amendments to Rules on Shareholder Proposals*, SEC Rel. No. 34-40018 (May 21, 1998). The Company is a leading provider of virtual shareholder meeting services, which are utilized by certain of the Company's clients to facilitate their shareholder meetings. In providing such services, the Company does not specify the manner in which its clients' conduct their virtual shareholder meetings, nor does the Company regularly collect information or report systemically on the content of such meetings. Furthermore, the Company does not regularly collect or publish such information regarding the conduct of virtual meetings globally.

The Staff has long agreed, both before and after the issuance of Staff Legal Bulletin 14L (Nov. 3, 2021) ("SLB 14L"), that proposals relating to an issuer's products and services, or requesting reports related to such products and services, are subject to exclusion under Rule

[1] *See Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings* (Dec. 10, 2020), *available at* https://cclg rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf.

14a-8(i)(7) as relating to ordinary business matters – even in circumstances where the products or services are considered controversial. *See MetLife, Inc.* (Apr. 24, 2023) (requesting a report on the risks created by the company's business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting or failing to continue client relationships); *JPMorgan Chase & Co.* (Mar. 21, 2023) (same); *JPMorgan Chase & Co.* (Mar. 21, 2023) (seeking a report regarding requests to close, or issuing warnings regarding imminent closure of, customer accounts by governmental authorities); *American Express Co.* (Mar. 9, 2023) (requesting a report regarding risks associated with tracking, collecting or sharing information regarding payment processing for the sale and purchase of firearms); *Johnson & Johnson* (Mar. 2, 2023) (requesting a report regarding the business rationale and expense regarding the company's membership in corporate and executive membership organizations); *Amazon.com, Inc.* (Apr. 8, 2022) (requesting a report regarding the distribution of stock-based incentives throughout the workforce); *Amazon.com, Inc.* (Apr. 8, 2022) (requesting a report on workforce turnover rates due to COVID-19, including assessment of the impact on the company's diversity, equity and inclusion); *JPMorgan Chase & Co.* (Mar. 25, 2022) (requesting a report regarding the impact of underwriting multiclass share offerings); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016, *recon. denied* Nov. 22, 2016) (requesting a report assessing the financial risk of continued sales of tobacco products); *Pfizer Inc.* (Mar. 1, 2016) (requesting a report describing steps taken to prevent the sale of its medicines for use in executions); *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (requesting a report addressing the social and financial impacts of the company's direct deposit advance lending service); *The TJX Companies, Inc.* (Mar. 29, 2011) (requesting a report regarding risks created by the company's actions to avoid or minimize U.S. federal, state and local taxes); *The Coca-Cola Co.* (Jan. 21, 2009, *recon. denied* Apr. 21, 2009) (requesting a report evaluating new or expanded options to enhance transparency of information to consumers of bottled beverages); *Bank of America Corp.* (Feb. 27, 2008) (requesting a report detailing, in part, the company's policies and practices regarding the issuance of credit cards and lending of mortgage funds to individuals without Social Security numbers). In accordance with these precedents and the Staff's innumerable other precedents allowing exclusion of proposals related to an issuer's products and services, the Company should be allowed to exclude the Proposal because the requested report relates to the Company's ordinary business.

2. Staff Legal Bulletin No. 14L Does Not Affect the Arguments Presented in the No-Action Request

The Supplemental Correspondence notes that the precedents cited in the No-Action Request were, for the most part, issued prior to the publication of SLB 14L. Although SLB 14L rescinded Staff Legal Bulletin Nos. 14I, 14J and 14K (together, the "rescinded SLBs") and announced that the Staff will no longer take a company-specific approach in determining whether the significant social policy exception to Rule 14a-8(i)(7) applies, these changes do not affect the Staff's longstanding position that proposals relating to the conduct of annual meetings are excludable under Rule 14a-8(i)(7). Importantly, the Staff's position on these proposals and the precedents cited in the No-Action Request predate the issuance of the rescinded SLBs. Furthermore, the No-Action Request does not rely on an argument that there is not a nexus between the Company and the Proposal, but instead relies on the Staff's longstanding view that proposals related to the conduct of annual meetings are generally excludable under Rule 14a-8(i)(7).

As noted in the No-Action Request, the Staff's position regarding proposals related to annual meetings encompasses a wide variety of matters related to the conduct of annual meetings, including whether all shareholders are entitled to attend and speak, whether the chairman of the meeting is required to answer shareholder questions, the time allotted for any shareholder to speak and whether he or she may ask follow-up questions, whether the meeting includes a question and answer period, whether there is a physical space set aside for shareholder discussion, whether there are procedures in place for shareholders to present and discuss issues, whether meetings include a reasonable amount of time for dialogue with directors, whether an annual meeting may be held virtually, requesting certain disclosures be made regarding the company's solicitation of proxies, monitoring preliminary voting results and regarding when meetings should be adjourned. The Proposal's focus on the period of time reserved for votes to be cast or changed following the presentation of the final proposal does not address an issue that is any more substantive than these other matters governing the conduct of annual shareholder meetings. SLB 14L is silent with respect to such matters and has no bearing on the precedents cited in the No-Action Request or on the Proposal.

3. The Supplemental Correspondence Relies on a Strawman Argument that Bears No Relation to the Proposal

The Supplemental Correspondence constructs a strawman that the No-Action Request, if granted, would eliminate shareholders' ability to vote at annual meetings. *The Company strongly disagrees with this assertion and notes there is no basis in the Proposal, the No-Action Request or the Company's other statements to support this assertion.* The Proposal (including the supporting statement) requests an indeterminate and subjective period of time to be provided for votes to be cast or changed at the Company's annual meetings following the presentation of the final proposal. The Proposal also requests a report on this subject and the Supplemental Correspondence and Proponent's other statements, as noted above, make it clear that the report is intended to cover the practices of the Company's clients or public companies as a whole. The No-Action Request notes, correctly, that the Staff has for decades consistently allowed proposals

seeking to regulate the conduct of annual meetings to be excluded under Rule 14a-8(i)(7), including for proposals relating to such matters as shareholders' right to speak at meetings and allocating periods of time for particular aspects of meetings. The No-Action Request also provides information regarding the Company's 2022 annual meeting, during which the polls were open for 10 minutes and a period of six minutes and 40 seconds was provided for shareholders to vote following the reading of the final proposal.

As could be expected, after constructing the strawman argument that the Proposal relates to the right to vote, the Supplemental Correspondence and the Proponent's other statements proceed to immolate this argument, which has no basis in reality, rather than addressing the Proposal's deficiencies. The Supplemental Correspondence makes materially false and misleading statements asserting that the No-Action Request would eliminate shareholders' ability to vote at annual meetings, potentially even allowing companies to close the polls before proposals are even presented. *See, e.g.*, August 10 Letter at page 2. The Proponent also has gone so far as to create blog and social media posts defacing the Company's trademarked marketing materials and making inaccurate and hyperbolic assertions that the Company is "threatening [the] right to proxy voting," that the No-Action Request "threatens democracy" and that the Company "says companies should require shareholders to vote before considering information presented at AGMs." Copies of these statements are attached hereto as Exhibit C. Notwithstanding these assertions, the Company and the No-Action Request do no such thing. The Proposal does not relate to proxy voting, but rather the time allocated for voting at annual meetings, has nothing to do with "democracy," and the No-Action Request makes no statements regarding how companies should conduct their annual meetings. The statements in the Supplemental Correspondence and in the materials included in Exhibit C are pure fallacy and should be given no consideration by the Staff in addressing the No-Action Request.

4. The Proposal and the Proponent Rebuttal Letter are Impermissibly Vague

As discussed in the No-Action Request, the Proposal and supporting statement do not provide any explanation or context for the meaning of several critical terms, such as "appropriate changes" and "reasonable time." The Supplemental Correspondence fails to offer any further insight into the meaning of these terms and makes it clear that the term "report" in the Proposal is also vague, as the Proponent is seeking a report regarding the practices of the Company's clients or public companies generally, rather than a report regarding the Company's practices. As noted in the No-Action Request, these terms (including "report") are subject to differing interpretations by the Company and its shareholders and are inherently based on a potentially limitless number of factors that are unique to each meeting, including, but not limited to, the number of proposals being considered, the number of attendees at the meeting, the relative amount of support or opposition to a proposal and whether there are any questions or debate regarding proposals under consideration. The Proposal was submitted a year after the Company provided attendees with 10 minutes of voting time, including six minutes and 40 seconds between the time the last proposal was read and the closing of the polls. There were three proposals voted upon, no questions asked and four of 36 shareholders in attendance cast votes while the polls were open. While the Company believes this amount of time was more than reasonable, it is impossible to determine what changes, if any, would be needed to implement the

Proposal and to afterwards ascertain the Company's compliance. Similarly, it is not possible from the face of the Proposal or the supporting statement to understand the content of the requested report. In this regard, the Proposal is akin to the precedents cited in the No-Action Request allowing exclusion under Rule 14a-8(i)(3) for proposals that failed to define key terms and/or failed to adequately inform the issuer of actions necessary to implement the proposal. Furthermore, the ambiguity of the report requested by the Proposal, as noted above, underscores the fact that the Proposal fails to sufficiently inform the Company of the action(s) necessary to implement the Proposal and provides an additional basis to allow the exclusion of the Proposal under Rule 14a-8(i)(3).

CONCLUSION

Based on the No-Action Request and foregoing supplemental analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from its 2023 proxy materials under Rule 14a-8(i)(7) and Rule 14a-8(i)(3).

* * * * *

Broadridge anticipates that the 2023 proxy materials will be filed on or about September 27, 2023. Accordingly, Broadridge would appreciate receiving the Staff's response to the No-Action Request by September 20, 2023.

If the Staff disagrees with Company's view that it can omit the Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. If the Staff has any questions regarding this request or requires additional information, please contact me at maria.allen@broadridge.com or (516) 472-5472.

Very truly yours,

Maria Allen
Associate General Counsel and
Corporate Secretary

cc: Sanford Lewis
John Chevedden

David B.H. Martin
Matthew C. Franker
Covington & Burling LLP

Exhibit A

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Maria.Allen@broadridge.com, dmartin@cov.com, mfranker@cov.com

July 25, 2023

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

To Whom It May Concern:

This letter is in response to a July 11, 2023, letter by Maria Allen, Associate General Counsel and Corporate Secretary of Broadridge Financial Solutions, Inc (the "Company" or "Broadridge").

Ms. Allen asserts that my shareholder proposal ("Proposal") can be omitted because it deals with a matter relating to the company's ordinary business operations and is impermissibly vague.

The proposal asks the Company "to initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings and that our company issue a brief report on current practices and options to address this issue."

We review both of Ms. Allen's assertions in turn below.

Company Assertion: The Proposal may be excluded under Rule 14a-8(i)(7) because it concerns the conduct of shareholder meetings related to the Company's ordinary business operations.

Background: If the company's bylaws do not expressly prohibit it, there is generally no legal requirement under Delaware law that a company must keep the polls open for a time period that allows shareholders to consider the information presented at the annual meeting. For example, DEL. CODE 8, § 231

> (c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

Article 2.11 of Company bylaws gives sole discretion of when to close the polls to the person presiding at the meeting
(https://www.sec.gov/Archives/edgar/data/1383312/000119312507068899/dex43.htm):

> The date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting.

Likewise, Delaware law allows companies to have a wide variety of governance bylaws, such as provisions allowing a split or combined CEO and chair. However, the SEC has not traditionally considered shareholder proposals on such topics excludable under "ordinary business," nor has it found ensuring shareholder voting rights an excludable topic.

Citations: The Company cites no-action letters relating to the conduct of annual meetings, none of which dealt with the issue of informed voting. Additionally, almost all of these were dated prior to November 3, 2021, when the SEC published Staff Legal Bulletin No. 14L (CF) ("14L"). The single no-action letter cited by the Company after the issuance of 14L was *Sportsman's Warehouse Holdings, Inc.* (Apr. 10, 2023) ("Sportsman's").

With regard to Sportsman's, unlike my Proposal, Sportsman's was not cast in precatory language. Sportsman's would have usurped the Board's discretion provided under the DGCL and the Company's governance documents to manage the functions of the company, regardless of whether the Board determined that the actions requested were in the company's interest. Consequently, because that proposal did not allow the Board to exercise its judgment in determining whether to adjourn the Company's 2023 annual meeting of stockholders, a matter clearly within the Board's discretion and purview, Sportsman's Warehouse Holdings was granted a no-action letter.

The current Proposal is precatory and leaves much discretion to Broadridge.

Rebuttal: The "ordinary business" exclusion rests on two central considerations. "The first relates to the proposal's subject matter and goes to the notion that certain matters should not be subject to direct shareholder oversight because they are so fundamental to management's ability to run the day-to-day affairs of a company.[9] The second relates to the degree to which the proposal "micromanages" the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."[10]" (https://www.sec.gov/news/speech/jones-cii-2022-03-08#_ftn9, Renee Jones, former Director of the SEC's Division of Corporate Finance)

The annual meeting is not part of day-to-day business operations but is an annual exercise in corporate governance in which shareholders play a crucial role. Allowing "a reasonable time for votes to be cast or changed after the final proposal is presented" is not a matter "of a complex nature," such that shareholders cannot make an informed judgment. It is a matter of practicing good corporate governance, ensuring that shareholders can vote after considering all relevant information provided to meeting attendees.

Under Delaware law, the board of directors is responsible for managing the affairs of the corporation. The composition and structure of the board, including the roles of chairman and lead director, are typically determined by the company's bylaws and corporate governance guidelines. These documents may establish requirements for independence, committee appointments, and leadership roles within the board. However, few companies would argue

today that shareholder proposals requesting an independent board chairman or a lead director deal with "ordinary business."

Corporate governance practices evolve, and individual companies may adopt their own guidelines or follow best practices that recommend allowing a reasonable time for shareholders to cast their vote or change their vote after all proposals have been presented at the annual meeting. Shareholders should not be denied the right to submit proposals requesting that companies adopt policies that recognize that presentations of proposals at annual meetings can provide shareholders with additional information they may wish to consider in casting their votes. Closing the polls before or immediately following presentations denies shareholders that right.

The proposal requests the "Board of Directors of Broadridge Financial Solutions initiate appropriate changes to governance documents or proxy statements to provide a reasonable time for votes to be cast or changed after the final proposal is presented at the Company's annual general meetings." The request does not unduly limit the discretion of the board, since there is wide opinion of what time is considered "reasonable" but there is little argument that allowing *no* time to vote after the last proposal is presented is unreasonable.

At the 2020 Broadridge annual meeting, voting was cut off immediately after I presented my proposal on political disclosures, leaving no time for anyone in attendance to vote or change their vote on political contributions disclosures. I checked in with Doug Chia, a former corporate secretary at Johnson & Johnson, to see if this was a common practice. He responded in part as follows:

> The fact is that most (almost all?) companies close the polls right after all items of business have been presented. At J&J, we gave shareholders another five minutes to vote or change their votes. Intel left the polls open until the end of the Q&A session, which is probably the "right" way to do it, but that is extremely rare from what I have seen at large companies…
>
> While I hate when someone's answer to the question "Why do we do it this way?" is "Because *everyone* does it this way" or "Because we've *always* done it this way," that's all I've got. Sorry, guys!

Liz Dunchee, a prominent attorney with Fredrickson, notes (*Online Voting: Best Practices for Opening & Closing the Polls*, http://www.thecorporatecounsel.net/member/blogs/proxy/2022/08/online-voting-best-practices-for-opening-closing-the-polls.html), allowing time to vote has become increasingly important:

> Now that virtual & hybrid meetings are (likely) here to stay, one of the procedural wrinkles that's come to light is, how long do you need to leave the polls open? The pause to allow people to change their votes probably needs to be lengthier than it would be for in-person, because people can't simply raise their hand to show they're filling out a new ballot. It takes more than mere seconds to change a ballot online – and management can't see that attendees are working on it.

Carl & Peder Hagberg, providers of annual meeting services, wrote (https://optimizeronline.com/wp-

content/uploads/VOLUME_28_NUMBER_2.pdf?mc_cid=cecadccb5a&mc_eid=09d4116ec8) the following:

> Imagine our consternation when we reviewed the script for an upcoming Meeting at a major company - with eight proposals on the agenda - that said, "We will pause for five seconds to allow you to vote or change your vote online." Yikes! While yes, five seconds of silence can seem like an eternity, it is physically impossible to review and potentially change one's votes at a VSM in a mere five seconds. What to do??? Here's what we came up with - and what we'd recommend as the "best practice" for opening and closing the polls where there is online voting:
>
> - Declare that "the polls are now open for voting" when the Meeting is called to order - or, at the very latest, when it is time to begin the introduction of all proposals on the ballot, i.e., "the official business of the meeting."
> - Our own view is that the "best practice" is to introduce proposals one-by-one - and to ask if there is any discussion, which most of the time these days is no - but if so, to hear it then and there. If there is any discussion, allow a brief pause (a few seconds should be fine here) for voters to amend their votes if they wish to, before moving to the next item.
> - When all the proposals have been introduced, move to the General Discussion Period - and announce that the polls will be open for 10 more minutes "to allow voters who have not yet voted or who wish to change their votes online to do so." Yes, a few holders may have to 'multi-task' but so be it, we say.
> - At eight minutes into the Q&A provide "fair warning" that the polls will officially close in two minutes.
> - If at 10 minutes into the Q&A there are still questions coming in you might consider a "last an final warning" that the polls will close - and perhaps allowing one or two extra minutes if your own schedule permits before closing the polls and making final remarks, thanking attendees and declaring the Meeting "concluded" ... But a ten-minute period for online voting, once all the proposals have been introduced, amply meets our own "Inspector's sniff-test" for fairness to attendees and should be fine with shareholders and shareholder proponents alike.

Although the Company admits, it took specific measures to ensure shareholders had time to vote after the last proposal was presented and before closing the polls at its 2022 meeting, the Company implicitly reserves the right to revert to its behavior in 2020. They seek to deny shareholders an opportunity to request that the time allowed to vote be studied and that parameters adopted by the board be announced in proxy statements or governance documents.

The SEC allows companies to penalize proponents severely if they fail to present their proposals. However, presenting proposals is an otherwise meaningless exercise if no one can vote or change their vote based on what is presented.

As the SEC noted in Release No. 34-87458 (Nov. 5, 2019), the shareholder proposal rule "facilitates shareholders' traditional ability under state law to present their own proposals for consideration *at* a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals."[5] (my emphasis) "At" the meeting has different meaning than "before" the meeting. If the rule is to facilitate *consideration* at the meeting, voting must be allowed *after* consideration is given to all the information on the

proposals. Shareholders do not know what relevant information will be provided by a proposal's proponent or by management until such presentations are completed.

Proposals at annual meetings are presented so that shareholders can *consider* and vote on them. If their request to the SEC is granted, the Company and many other companies may find it advantageous to close the polls whenever they want, even before proposals are presented. Through its no-action request, Broadridge seeks to reduce annual meetings to meaningless exercises that could be fulfilled by simply playing a recording and restricting live voting to a few seconds at the beginning of the meeting.

This case involves a dispute over the desire of shareholders to be able to exercise their fundamental right to vote after all relevant information has been provided. It does not involve the exercise of business judgment, the corporation's power over its property, or with respect to its rights or obligations; rather, it involves allocation, between shareholders as a class and the board, of effective power with respect to the corporation's governance.

Company Assertion: The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague. The company cites several cases where Staff agreed proposals were "vague and indefinite."

Here is the heart of the Company's argument:

> In 2022 the Company implemented several practices at its annual meeting that were intended to provide shareholders with adequate time to question, debate and vote upon proposals brought before the annual meeting. In particular, the Company provided time following the reading of the proposals for shareholders in attendance to ask questions regarding the proposals to be voted upon. The meeting then featured a presentation from the Company's CEO regarding the Company's business, while the polls remained open for voting in order to provide time for shareholders attending the meeting to submit questions, vote or change their vote… Specific to the concern addressed in the Proposal, 6 minutes and 40 seconds elapsed at the Company's 2022 annual meeting between the time the last proposal was read and the closing of the polls. During this time, no questions were asked and four shareholders attending the meeting voted while the polls were open.
>
> The Proposal implicitly critiques the conduct of the Company's 2022 annual meeting by requesting "appropriate changes" to provide "a reasonable time for votes to be cast or changed," but does not provide any guidance for management, the Company's directors or shareholders to understand what changes would be needed in order to satisfy the Proposal…

Rebuttal:

The Company is unduly defensive. The Proposal does not "implicitly critique(s) the conduct of the Company's 2022 meeting." It seeks to avoid reversion to conduct displayed by the Company at its 2020 meeting when it prohibited shareholders from voting after considering the information presented.

As indicated previously, there are differences of opinion of what time is considered a "reasonable" amount of time. Still, there is little argument that allowing *no* time to vote after the

last proposal is presented is unreasonable. To my knowledge, no one has criticized Broadridge for closing its polls too early at its 2022 meeting.

Broadridge has studied many issues at virtual shareholder meetings and has helped develop common practices and standards. They can do the same for the issue of how much time shareholders should have to consider the information provided by presentations before closing the polls.

If Broadridge studies the issue, writes a brief report on practices/options, and publicly announces its polling practices in advance of its meeting, directors are likely to choose to avoid the criticism they faced in 2020. Broadridge is much more likely to provide a reasonable amount of time for votes to be cast or changed after the final proposal is presented, as they did at the 2022 meeting if the proposal is allowed to stand than it would be if the SEC issues a no-action letter.

Broadridge is a Key Influencer in the Conduct of Virtual Shareholder Meetings

It is worth noting that Broadridge is a key provider of services to companies holding virtual shareholder meetings and has been intimately involved in issuing two reports providing best practices and guidelines.

Guidelines for protecting and enhancing online shareholder participation in annual meetings (https://www.broadridge.com/_assets/pdf/broadridge-guidelines-for-protecting-and-enhancing-online-shareholder-participation-in-annual-meetings.pdf), prepared in 2012 advises that companies establish "Specific and reasonable time guidelines for questions asked of management (e.g., five minutes for shareholders presenting proposals and two minutes for general questions)."

No advice was provided on how long to leave polls open or reminding companies that companies incorporated in Delaware have a duty to announce "the time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting."

However, the report did include the following: "The principles outlined below are *not* intended to simply reproduce in-person meetings through technology. Instead, they are intended to leverage technology in a way that will *increase* shareholder participation, engagement, and *voting* at annual meetings." (My emphasis) How does Broadridge reconcile its position that online meetings will increase voting with its no-action request, which implies it should be free to close the polls whenever it wants without any input from shareholders?

The *Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings* (https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf) advised that companies "Provide a prominently visible and simple mechanism on the main VSM page for shareholders to vote their shares (and change their votes if desired) during the time the polls are open." Even though the report states that "Voting is a shareholder's most important and powerful right" and "It is essential that shareholders have all material information needed to make a voting decision," no advice was provided on how long to leave polls open so that shareholders could consider "all the material information" offered prior to the close of voting.

Again, it is impossible to reconcile the two positions. In its public reports, Broadridge advocates that shareholders should have all the material information needed before voting. In its no-action request, Broadridge argues voting matters "relate to the ordinary business of the Company, as reflected in the Company's bylaws, which provide that the order of business at all shareholder meetings shall be determined by the chair of the meeting *unless changed by shareholders representing a majority of votes cast at such meeting*." (my emphasis)

Of course, shareholders cannot influence the order of business if they are denied the right to vote on that issue.

Conclusion

Proposals at annual meetings are presented so that shareholders can consider the information provided and then vote. Suppose the Company's request to the SEC is granted. In that case, Staff will essentially sanction the Company's opinion that shareholders have no right to request that polls remain open until they can consider the information presented.

Indeed, the Company's logic would even bar shareholders from voting on a proposal that requests the Company not close the polls *before* proposals are presented. Through its no-action request, Broadridge seeks to reduce annual meetings to meaningless exercises.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Broadridge on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach James McRitchie by emailing [redacted].

Sincerely,

James McRitchie
Shareholder Advocate

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel net

August 8, 2023
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Broadridge Financial Solutions, Inc. regarding allowing time for voting in the AGM on Behalf of James McRitchie

Ladies and Gentlemen:

James McRitchie (the "Proponent") is beneficial owner of common stock of Broadridge Financial Solutions, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. The Company submitted a no action request dated July 11, 2023 ("Company Letter") to the Securities and Exchange Commission through Maria Allen, Associate General Counsel and Corporate Secretary. James McRitchie previously responded to the no action request.

Subsequently, Mr. McRitchie hired me to examine the record of this no action request and to provide additional legal observations to the Staff. This letter contains those observations, and a copy of this letter is being emailed concurrently to Maria Allen.

The Proposal addresses a fundamental governance issue, not ordinary business

The Proposal addresses a fundamental issue of corporate governance that is central to the shareholder franchise and the relationship between shareholders and the company.

While the question of whether shareholders have sufficient time to vote after hearing presentations from the shareholders and management regarding shareholder proposals might seem like it is just about discretionary "time allocations" in the meeting, **it addresses a question of whether, in this increasingly virtual era, the corporate annual meeting is an actual interactive forum for shareholder deliberation.**

A new era for shareholder meetings

The history of shareholder meetings and shareholder deliberation can be reasonably divided into three eras.

In the first era, prior to the innovation of proxy voting, the shareholder meeting culminated with shareholders present in the face-to-face meeting casting their votes in response to arguments presented in the meeting.

In the second era, as proxy voting has become a norm, and supported by SEC protective rules ensuring that investors are adequately informed of the issues to be debated in the meeting, the volume of voting gravitated towards most votes being cast remotely, through the proxy process and ultimately through online voting vehicles including those supported by Broadridge. Relatively few shareholders attended the physical meetings and the norm of in-meeting voting devolved into an almost insignificant part of the corporate governance process, especially given the recent adoption of universal proxy rules.

In the third era, which began during the recent Covid pandemic, virtual attendance in shareholder meetings became a practical opportunity. Unlike the second era, in this new third era, technology has enabled broad shareholder attendance in the corporate annual meeting, with the possibility of shareholder meetings becoming a revitalized and engaging real-time forum for shareholder engagement with the CEO and board of the company, a real-time exchange of views, and **the opportunity for shareholders to consider the arguments presented and to cast their votes accordingly**.

The presentation of proposals at the shareholder meeting would no longer be viewed as a formality (as investors would have an opportunity to vote after hearing the presentations, which may rebut statements made in the proxy), but instead as an opportunity for debate and deliberation. Virtual technology has thus enabled a new era with the opportunity for profoundly expanded shareholder engagement, and a real-time engagement process that culminates in many shareholders listening to both sides of the arguments and then casting their votes accordingly. The advent of virtual or hybrid (virtual and in person) meetings offers the opportunity for an enlivened civic culture of shareholder democracy that is enabled by the virtual technology, and the possibility of shareholder meetings that more shareholders would reasonably want to participate and vote in.

As the proponent noted in his initial no action response, this is consistent with the logic of "presenting the proposal in the meeting." A shareholder meeting implies participation, deliberation, and voting. Today what we have is cognitive dissonance – a meeting without the opportunity for genuine shareholder deliberation. It is of utmost interest to shareholders to ensure their opportunity to deliberate and vote in the meeting, a matter of essential corporate

governance. Importantly, the current shareholder proposal identifies a current limitation that prevents this third era of corporate governance from being made real. To the extent that shareholders are not allowed time to listen and decide, they must actually cast their votes before the presentations in the meeting. Therefore, the potential for this third era to emerge is dependent on innovation, such as the proponent's proposal, being widely adopted by corporations.

Common sense guidance from corporate governance experts ratifies the importance of this policy innovation.

Materials in Jim McRitchie's initial response letter of July 25, 2023 demonstrated that the concern he is raising with his proposal is a common sense and fundamental governance issue, and not merely a logistical question reserved to board or management. For instance, in his letter he noted that Carl & Peder Hagberg, providers of annual meeting services, reviewed the script for an annual meeting of a company and were surprised to discover that the company intended to provide five seconds for online voting: "it is physically impossible to review and potentially change one's votes at a VSM [virtual shareholder meeting] in a mere five seconds."[1]

The Hagbergs provided recommendations for best practice:

- When all the proposals have been introduced, move to the General Discussion Period and announce that the polls will be open for 10 more minutes "to allow voters who have not yet voted or who wish to change their votes online to do so."
- At eight minutes into the Q&A provide "fair warning" that the polls will officially close in two minutes.

They noted further that: …" a ten-minute period for online voting, once all the proposals have been introduced, amply meets our own "Inspector's sniff-test" for fairness to attendees and should be fine with shareholders and shareholder proponents alike."

Similarly, Liz Dunchee, a prominent attorney with Fredrickson, notes that allowing time to vote has become increasingly important in the virtual and hybrid meetings:

> Now that virtual & hybrid meetings are (likely) here to stay, one of the procedural wrinkles that's come to light is, how long do you need to leave the polls open? The pause to allow people to change their votes probably needs to be lengthier than it would be for in-person, because people can't simply raise their hand to show they're filling out a new ballot. It takes more than mere seconds to change a ballot online -- and management can't see that attendees are working on it.[2]

[1] https://optimizeronline.com/wp-content/uploads/VOLUME_28_NUMBER_2.pdf?mc_cid=cecadccb5a&mc_eid=09d4116ec8.

[2] Online Voting: Best Practices for Opening & Closing the Polls https://www.thecorporatecounsel.net/member/blogs/proxy/2022/08/online-voting-best-practices-for-opening-closing-the-polls.html

In addition to the materials in the Proponent's initial letter, it should be noted that Broadridge's own guidance on shareholder meetings, the Annual Meeting Handbook[3] contains this recommendation for meeting scripts:

> Pro Tip: Build in a reasonable pause in the script following the presentation of the proposals before closing the polls to allow shareholders to vote or change their vote (up to 10 minutes depending on the number and complexity of the proposals).

The Proposal does not address ordinary business

The Company Letter asserts that the proposal addresses ordinary business and cites to numerous excluded proposals that attempted to prescribe specific mechanisms for the conduct of the meeting.

However, the current proposal is distinguishable from prior proposals addressing mere minutia of the conduct of annual meetings. Instead, it goes to a fundamental governance concern in this third era of corporate governance: will the deliberative norm of meetings be made real?

Thus, in the current context, the proposal is distinguishable from prior ordinary business exclusions in, for instance, *USA Technologies, Inc.* (Mar. 11, 2016) (permitting exclusion under Rule 14a-8(i)(7) adding rules of conduct to bylaws for meetings of shareholders); *Servotronics, Inc.* (Feb. 19, 2015) (requesting a question-and-answer period at the company's annual meeting); *Mattel, Inc.* (Jan. 14, 2014) (requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the Annual Meeting"); *Citigroup Inc. (Jan. 14, 2004)* (seeking to prescribe, among other things, the amount of time each stockholder may speak and when such speaker may ask a follow-up question).; *PG&E Corp.* (Jan. 27, 2000) (more fulsome public discussion of concerns during the annual meeting because it relates to the company's ordinary business operations).

Nor is the proposal like the excluded proposal in *Target Corp.* (Apr. 9, 2021) which sought to micromanage the approach of a virtual meeting, to require that such meetings "be held in zoom type format in which all participants can be heard and seen via their internet connected devices. Participants include shareholders registered for meeting attendance, and Target associates."

In contrast, the current proposal does not micromanage company decisions, but only flexibly requests that the Company allow adequate time for shareholders to vote after the proposals have been presented. The question of how much time, and how this is carried out, remains in the discretion of the board and management.

***Brinker and Campbell Soup* decisions are not necessarily distinguishable**

[3] https://www.broadridge.com/resource/annual-meeting-handbook

The Company Letter cites the *Brinker* and *Campbell Soup* as distinguishable because they occurred during the Covid era, a special circumstance that added a particular argument for virtual meetings. The proposals requested the Company to develop and adopt a policy, and amend its governing documents as necessary, to ensure that its future annual and special shareholder meetings will be held either in whole or in part through virtual means.

The proponent in the *Brinker* no action request wrote a detailed discussion of the importance of virtual meetings which included the pandemic but also discussed how the proposal:

> would further "various company social and sustainability policies," such as inclusiveness, equity, and environmental benefits. The Company argues that these factors do not raise a policy issue, but only state why "providing a means for virtual attendance is desirable or advantageous." But such an argument does not resolve whether a significant policy exists. Maximizing shareholder value and reducing greenhouse gas emissions are both desirable and advantageous, yet it can hardly be disputed that the former is simply an ordinary business issue, while the latter implicates a significant policy…
>
> Importantly, the Company makes no attempt to dispute that the Proposal does, in fact, involve issues of public health, of shareholder inclusiveness and equity, or that it furthers the Company's energy and emissions reduction goals. Instead, the Company just summarily states, without a board analysis or substantive discussion, that none of the policy issues in the Proposal--which the Company recognizes relate to health, inclusiveness, and sustainability-- are "issues of significance to the Company for purposes of Rule 14a-8(i)(7)."

The proponent also noted that virtual meetings are aligned with the company's environmental commitments — to "minimize or eliminate energy and emissions associated with the transportation and physical hosting requirements of in-person meetings."

Notably, the Staff rationale for denying the no action request extended <u>beyond the pandemic</u> for transcending ordinary business noted a twofold rationale "In light of technological progress <u>and</u> public health guidance in light of the COVID-19 pandemic, in our view the issue of shareholders' virtual access to annual and special shareholder meetings does not relate to the Company's ordinary business operations." [emphasis added]

<u>The Proposal is neither vague nor misleading</u>

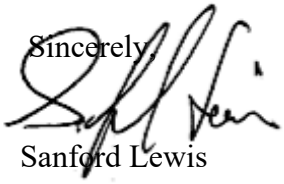
Moreover, the arguments regarding vagueness amount to a complaint about the flexibility provided to board and management to exercise discretion in determining the correct amount of time to be allowed. "Appropriate changes" and "reasonable time" are not vague in this context. The thrust of the proposal is clear as are the possible solutions. Moreover, Broadridge is an expert in this arena. If anyone has the expertise to assess what is appropriate and reasonable to address these clearly identified governance failures, the Company can do so. But it is neither

ordinary business nor vague to ask the Company to do so.

Conclusion

As a result of the pandemic, we have now entered the new third era of corporate annual meetings in which the opportunity for virtual participation is likely to be a new norm of corporate governance. In this new era, however, the contradictory conduct of meetings that does not allow an actual interactive experience of meeting participants – denial of the opportunity to take in the deliberative debate and then to decide and vote – represents a significant corporate governance contradiction and challenge to the Company. For these reasons, it is clear that the Proposal addresses a significant corporate governance issue that transcends ordinary business and does not micromanage. Nor is it vague. In short, the company has not provided a basis for excluding the proposal.

Sincerely,



Sanford Lewis

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Maria.Allen@broadridge.com, dmartin@cov.com, mfranker@cov.com, gina@pei.group, sanfordlewis@strategiccounsel.net

August 10, 2023

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

To Whom It May Concern:

This letter supplements my July 25 response and that of my legal counsel, Sanford Lewis on August 8 to a July 11, 2023, letter by Maria Allen, Associate General Counsel and Corporate Secretary of Broadridge Financial Solutions, Inc (the "Company" or “Broadridge”).

Ms. Allen asserts that my shareholder proposal ("Proposal") can be omitted because it deals with a matter relating to the company’s ordinary business operations and is impermissibly vague.

Although I raised the point below in my earlier response, I hope to make my point more explicit here by more fully quoting the SEC.

As the SEC noted in Release No. 34-87458 (Nov. 5, 2019), “Rule 14a-8 enables shareholder-proponents to easily present their proposals to all other shareholders, and to have proxies solicited for their proposals, at little or no expense to themselves. The rule, the concept of which was first adopted by the Commission in 1942, thus facilitates shareholders’ traditional ability under state law to present their own proposals **for consideration at** a company’s annual or special meeting, and it facilitates the ability of all shareholders to **consider and vote** on such proposals.” [https://www.sec.gov/files/rules/proposed/2019/34-87458.pdf, page 6] (my emphasis)

“At” the meeting has a different meaning than “before” the meeting. If the rule is to facilitate **consideration *at* the meeting**, voting must be allowed ***after* consideration is given** to all the information on the proposals. That includes presentations of board and shareholder proposals. Significantly, shareholder presentations may rebut the board’s opposition statement, which is included in the proxy. Additionally, shareholders need time to consider any questions on proposals raised at the meeting and any responses provided. Shareholders do not know what relevant information will be provided at the meeting until such presentations and any questions and answers on proposals are completed.

SEC Chairman Ganson Purcell, provided the following explanation for the initial Commission rules requiring the inclusion of shareholder proposals in company proxy materials: “We give [a stockholder] the right in the rules to put his proposal before all of his fellow stockholders along with all other proposals . . . so that they can see then what they are and vote accordingly. . . . The rights that we are endeavoring to assure to the stockholders are those rights that he has traditionally had under State law, to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on.” [Securit[ies] and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce, 78th Cong., 1st Sess. 17–19 (1943), cited in footnote 5, https://www.sec.gov/files/rules/proposed/2019/34-87458.pdf]

Implicit in Chairman Purcell’s pronouncements in 1943 and explicit in the SEC’s own 2019 rulemaking is the need to facilitate **consideration** of proposals **at** the meetings. According to the Oxford dictionary, “consider” literally means to “think carefully about (something), typically before making a decision.” “Consideration” means careful thought, ***typically over a period of time***. (my emphasis) Proposals at annual meetings are presented so that shareholders can ***consider and vote*** on them. That has been the premise of SEC’s rules since 1943.

If the Broadridge request is granted, the SEC would abrogate the explicit language and intent of prior rulemakings on Rule 14a-8 and its predecessor rules since 1943. Broadridge and many other companies may then find it advantageous to close the polls even before proposals are presented. Granting the no-action request could reduce annual meetings to a meaningless exercise.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Broadridge on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach James McRitchie by emailing [redacted]

Sincerely,

James McRitchie
Shareholder Advocate

Exhibit B

From: James McRitchie [redacted]
Sent: Tuesday, July 18, 2023 8:05 PM
To: Allen, Maria [redacted]
Cc: John Chevedden [redacted] Gumbs, Keir [redacted]
Franker, Matthew [redacted]; Sanford Lewis [redacted]
Timothy Smith [redacted]
Subject: Re: Allow Time to Vote Proposal/BR Annual Meeting

Ms. Allen

I'm fine with your additional language. HOWEVER, I also want Broadridge to meet the proposal's request to publicly report on current practices and options to address the issue of allowing time to vote.

I was surprised when I came back from vacation to find your no-action request https://www.sec.gov/files/corpfin/no-action/14a-8/mcritchiebroadridge071123-14a8-incoming.pdf. After reading it, I spent a couple of days drafting a rebuttal and engaging legal counsel.

I'm stunned that Broadridge believes shareholders have *no* right to use the proposal process to request the ability to vote after proposals are presented. You argue the circumstances of casting votes at the meeting is entirely a management prerogative under "ordinary business." No matter how impassioned a speech or how damning the facts, which may be exposed on the floor, management has every right to ensure only votes cast before the meeting can impact the outcome.

Prior to your no-action request, I thought Broadridge would at least want to appear somewhat impartial.

Given that Broadridge has led or participated in at least two studies on virtual shareholder meeting (VSM) practices and that Broadridge has also worked tirelessly to promote the use of VSMs, I believe it is in the best position to report on current practices and to ensure shareholders have a reasonable amount of time to vote after all proposals have been presented.

For many companies, annual meetings have devolved to the point of legal rituals. However, Broadridge has spent years reviving them by convincing companies, shareholders, and regulators that VSMs (largely ignoring hybrid meetings) offer many advantages to in-person annual meetings, where often only 2-3 shareholders show up. I asked Chat GPT what advantages Broadridge has been touting. A second or two later, I got the following response:

Broadridge Solutions, a leading provider of investor communication and technology solutions, offers several advantages of holding virtual shareholder meetings. Here are some of the benefits typically touted by Broadridge and other proponents of virtual shareholder meetings:

1. Accessibility: Virtual meetings allow shareholders to participate from anywhere in the world, eliminating the need for travel. This accessibility increases shareholder engagement and participation, as individuals can join meetings remotely using their computers or mobile devices.

2. Cost savings: Virtual meetings can significantly reduce costs associated with physical meetings, such as venue rental, travel expenses, accommodation, and catering. These savings can be particularly beneficial for companies with a large shareholder base or those with geographically dispersed shareholders.

3. Time efficiency: Virtual meetings streamline the meeting process, often resulting in shorter durations compared to in-person meetings. With well-organized virtual platforms, shareholders can efficiently address the agenda items without the need for time-consuming logistics or breaks.

4. Increased shareholder engagement: Virtual meetings can enhance shareholder engagement by providing interactive features. Shareholders can submit questions and comments in real-time, participate in polls and surveys, and interact with management and the board of directors. This level of engagement helps foster a sense of transparency and inclusivity.

5. Environmental sustainability: Virtual meetings have a significantly lower carbon footprint compared to physical meetings, as they eliminate the need for travel and associated greenhouse gas emissions. This aligns with companies' sustainability goals and demonstrates a commitment to environmental responsibility.

6. Flexibility and convenience: Virtual meetings offer shareholders flexibility in terms of scheduling and attending meetings. Shareholders can join the meeting at their convenience, increasing the likelihood of their active participation. Virtual meetings also provide the option for on-demand access to recordings, allowing shareholders to review the proceedings later if they were unable to attend in real-time.

7. Enhanced security and data privacy: Virtual meetings can be conducted through secure and encrypted platforms, ensuring confidentiality and protecting sensitive shareholder information. Companies can implement robust security measures to prevent unauthorized access and maintain the integrity of the meeting.

However, unmentioned is that VSMs can result in more informed voting. Further, since many more people attend virtual than in-person meetings, the votes at such meetings *can* actually change the outcome. If Broadridge wins its no-action request and Issuers take your arguments to their logical conclusion, voting will be closed *before* proposals are presented.

I hope we can reach a withdrawal agreement. However, if generating a report is a deal breaker for Broadridge, I can prepare to move forward publicly with a rebuttal to your no-action request within a short timeframe. Please let me know ASAP.

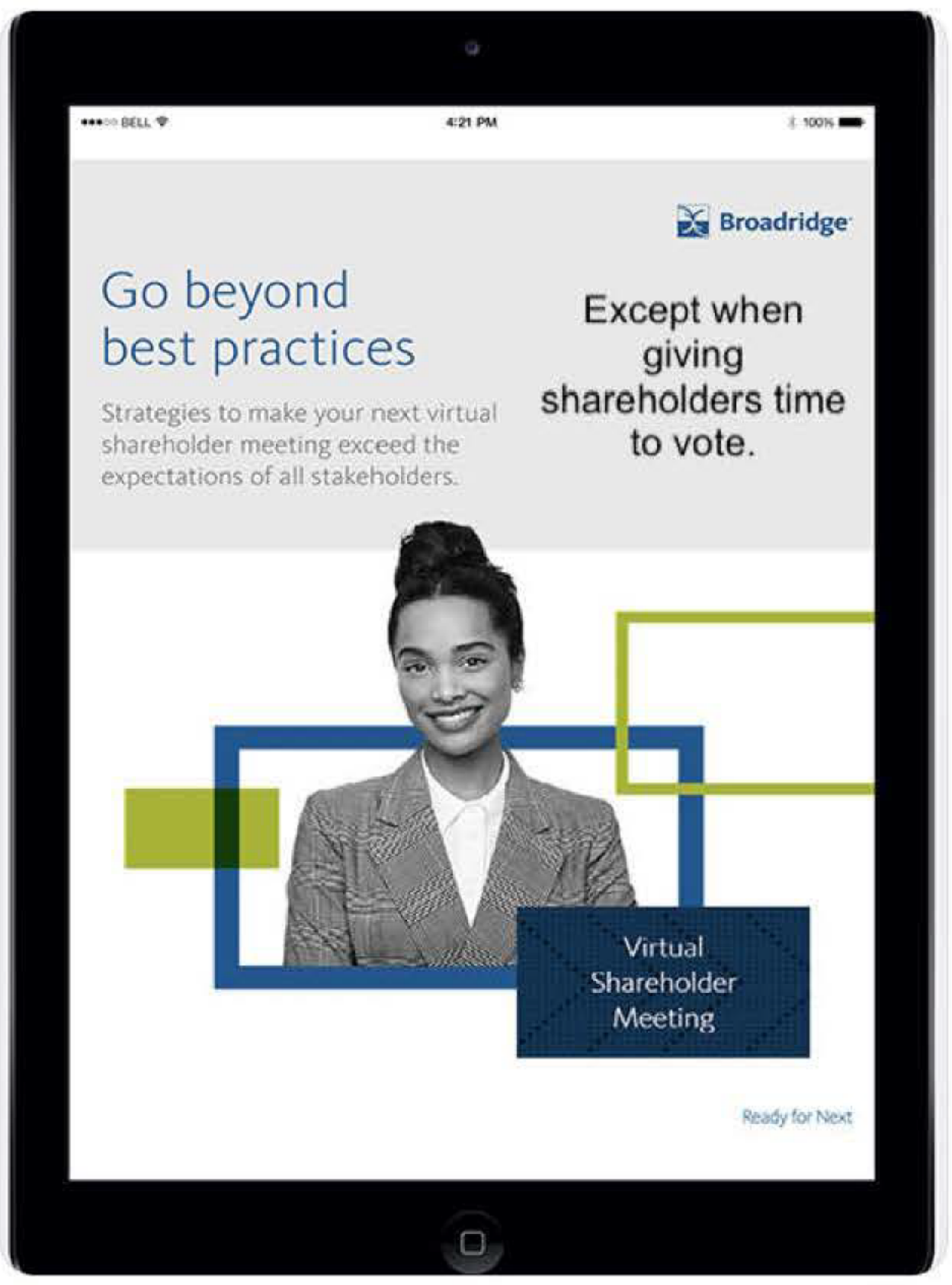
Sincerely, — Jim

James McRitchie
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
PII
[redacted]

Exhibit C

James McRitchie, Sharehol... · 8/3/23

Broadridge Threatens Right to Proxy Voting at Virtual Shareholder Meetings via no-action request to SEC Staff. Your assistance is wanted. corpgov.net/2023/08/broadr... $BR #democracy #shareholders #corpgov #ESG #capitalism #VSM



151 1

Great interview by @brocromanek @SEC #SEC

161 1 1

James McRitchie, Shareholder... · 6d

Broadridge No-Action Request Threatens Democracy. AGMs could be reduced to a prerecorded message, with election results included. #corpgov #ESG #democracy #SEC corpgov.net/2023/08/broadr... $BR says companies should require shareholders to vote before considering info presented at AGMs

corpgov.net
Broadridge No-Action Request Threatens Democracy

148 1

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Maria.Allen@broadridge.com, dmartin@cov.com, mfranker@cov.com, gina@pei.group, sanfordlewis@strategiccounsel.net

August 25, 2023

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

To Whom It May Concern:

This letter supplements my prior responses and that of my legal counsel, Sanford Lewis, on August 8, 2023, to a July 11, 2023, letter by Maria Allen, Associate General Counsel and Corporate Secretary of Broadridge Financial Solutions, Inc (the "Company" or “Broadridge”) and focuses on her subsequent letter of August 22, 2023.

Ms. Allen is reading too much into the requested report, which does not demand Broadridge review its past practices or those of its clients. My proposal presents the findings of a survey by the Interfaith Center on Corporate Responsibility and the advice of Carl Hagberg. Broadridge could report those practices and options, or they could seek additional information through other sources, including examining their own practices at their 2020 and 2022 meetings.

Ironically, Broadridge argues both that “the requested report relates to the Company’s ordinary business” and that “the Company does not specify the manner in which its clients’ conduct their virtual shareholder meetings, nor does the Company regularly collect information or report systemically on the content of such meetings.”

Therefore, by its own admission, setting time limits for shareholders to make an informed vote or advising clients on this issue is not part of the Company's “ordinary business” “rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.”

The heart of the Company’s argument against including my proposal in the proxy appears in the second paragraph on the second page of their letter of August 22.

> The Proposal’s focus on the period of time reserved for votes to be cast or changed following the presentation of the final proposal does not address an

issue that is any more substantive than these other matters governing the conduct of annual shareholder meetings.

My proposal speaks to the heart of the SEC's mission: to protect investors and promote transparency in the financial markets, ensuring that shareholders have access to accurate and relevant information to make informed voting decisions. One of the Commission's roles in the proxy process is to help ensure that shareholders can intelligently exercise their right to vote.[1] ("Prior to the development of the Commission's proxy rules,… [t]he stockholder was merely invited to sign his name and return his proxy without being furnished the information essential to the intelligent exercise of his right of franchise.").

Most of the SEC's proxy rules relate to disclosure. As noted in my letter of August 10, 2023, nothing more substantive or fundamental occurs at an annual shareholders meeting than informed voting.

As the SEC noted in Release No. 34-87458 (Nov. 5, 2019), "Rule 14a-8 enables shareholder-proponents to easily present their proposals to all other shareholders, and to have proxies solicited for their proposals, at little or no expense to themselves. The rule, the concept of which was first adopted by the Commission in 1942, thus facilitates shareholders' traditional ability under state law to present their own proposals **for consideration at** a company's annual or special meeting, and it facilitates the ability of all shareholders to **consider and vote** on such proposals." [https://www.sec.gov/files/rules/proposed/2019/34-87458.pdf, page 6] (my emphasis)

In my prior letter, I quoted former SEC Chairman Ganson Purcell. The need to facilitate consideration of proposals at the meetings is implicit in Chairman Purcell's pronouncements in 1943 and explicit in the SEC's own 2019 rulemaking. According to the Oxford dictionary, "consider" literally means to "think carefully about (something), typically before making a decision." "Consideration" means careful thought, ***typically over a period of time***." (my emphasis) Proposals at annual meetings are presented so that shareholders can ***consider and vote*** on them. That has been the premise of SEC's rules since 1943.

If the Broadridge request is granted, the SEC would abrogate the explicit language and intent of prior rulemakings on Rule 14a-8 and its predecessor rules since 1943. Denying shareholders the ability to request a "reasonable time" for voting after proposals have been presented would be the same as telling shareholders they have no right to be able to consider the information provided at meetings before voting. That information can

[1] *See* Tenth Annual Report of the Securities and Exchange Commission, Fiscal Year Ended June 30, 1944, at 29 ("Prior to the development of the Commission's proxy rules,… [t]he stockholder was merely invited to sign his name and return his proxy without being furnished the information essential to the intelligent exercise of his right of franchise."). *See also* Mills v. Electric Auto-Lite Co., 396 U.S. 375, 381 (1970), *quoting* H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13-14 (1934) ("Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange."). (Ensuring that Shareholders Have a Meaningful, Effective Vote, Commissioner Kara M. Stein https://www.sec.gov/news/statement/ensuring-shareholders-have-meaningful-effective-vote#_ftn1**)**

come in the form of a shareholder proponent presenting their proposal and rebutting the board's opposition statement, the board's presentation of its own proposals, or as the result of information prompted by questions and answers.

The Company asserts that I wrote that the Company "says companies should require shareholders to vote before considering information presented at AGMs." That is a materially false statement. I never wrote or stated that Broadridge advocates that companies close the polls prior to shareholders presenting their proposals. The closest I can find to that quote is the following statement I made to the publication *Responsible Investor*:

> The company's logic would even bar shareholders from voting on a proposal that requests the company not close the polls before proposals are presented.[2]

As I mentioned in correspondence dated July 18, 2023, which Broadridge included as attachment B in its latest missive, "If Broadridge wins its no-action request and Issuers take your arguments to their logical conclusion, voting will be closed *before* proposals are presented."

If Staff issues a no-action on a proposal that requests reasonable time after presentations to vote because Staff determines that allowing time for informed voting is an ordinary business function, it follows that a proposal requesting that companies not close the polls *before* proposals are presented would also be granted no-action relief.

If a proposal aimed at allowing time to make an informed vote at an AGM is deemed by SEC Staff to be "ordinary business," as Broadridge argues, then the only recourse for shareholders who want to consider all information about a proposal presented at an AGM before voting would be to appeal to the Commission or the courts to ensure time is allowed at AGMs to consider proposals presented before voting.

On page 5 of their most recent rebuttal, the Company contends, "The Proposal does not relate to proxy voting, but rather the time allocated for voting at annual meetings, has nothing to do with "democracy," and the No-Action Request makes no statements regarding how companies should conduct their annual meetings."

Broadridge asserts that allocating time at annual meetings for voting "has nothing to do with 'democracy.'" Yet, as stated above and previously, the SEC's own rulemaking and statements by its chairman make it clear that Rule 14a-8 and its predecessor were and are intended to afford shareholders the right to *consider* shareholder proposals presented at meetings and to vote on them. We cannot *consider* presentations if voting is not held open for a reasonable time for such *consideration* to be given. The proposal is not about ordinary business, as that exemption has been interpreted, but about the fundamental right to make an informed vote.

---

[2] Corporate governance experts await SEC ruling on AGM voting windows proposal https://www.responsible-investor.com/corporate-governance-experts-await-sec-ruling-on-agm-voting-windows-proposal/

Most shareholders use a voter information form or a card granting authority to a proxy to vote their shares at the meeting. *All votes*, including those directed by proxy instructions assigned before the meeting, are taken and counted during the meeting. If *no* time is allocated for voting, how would vote counting and our form of democracy in corporate governance be realized?

Broadridge argues that only 36 shareholders attended their 2022 annual meeting, perhaps implying that votes cast at the meeting are inconsequential. However, *all* votes are actually cast at the meeting. The more shareholders realize that fact and the more informative such meetings become, the more shareholders would be likely to attend in the future. Of course, if Staff grants Broadridge its no-action request and companies are free to not allow a reasonable time to vote, meeting attendance is likely to drop even further.

Broadridge maintains that I am being "hyperbolic" in asserting that their no-action request threatens democracy.

It is worth noting that in 2020, the last proposal presented was a shareholder proposal from me on the sensitive issue of political expenditures. Many shareholders believe former Justice Kennedy's explanation in the 2010 Supreme Court case of Citizens United v FEC,[3] which limited the government's ability to constrain corporate expenditures for political purposes.

> With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are 'in the pocket' of so-called moneyed interests.

Yet, corporations were not and are not required to make the disclosures Justice Kennedy referenced. Many shareholders do not realize that democracy depends on democratic structures and mindsets throughout society, especially in the operation of corporations, which influence other social institutions, including governments at all levels.

Broadridge cut off voting immediately after I presented my proposal at the 2020 AGM, allowing no time for shareholders to consider my remarks.

There were no shareholder proposals at the Broadridge AGM in 2022. The last proposal presented was ratification of the auditor… a topic that generally receives near unanimity and rarely requires much consideration. Yet, Broadridge allowed shareholders six minutes to consider the Board's proposals. Perhaps Broadridge wants the flexibility to allow *no* time after the last proposal is presented if it is a shareholder proposal but to

[3] Citizens United: Five Years Later, https://www.corpgov.net/2015/01/citizens-united-five-years-later/

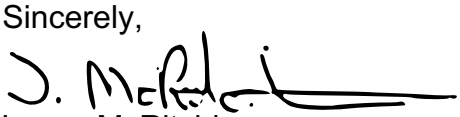
allow a reasonable amount of time for shareholders to vote when the last presentation is a Board proposal.

Broadridge essentially argues that allowing a reasonable amount of time to ensure an informed vote is not a “substantive” issue. However, the right to make an informed vote is at least as critical to corporate governance, if not more so, than the right to consider declassifying the board, having an independent chair, or doing away with supermajority voting requirements. Informed voting is *the* most fundamental right of shareholders in corporate governance.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Broadridge on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach James McRitchie by emailing [redacted].

Sincerely,



James McRitchie
Shareholder Advocate

Broadridge

Ready for Next

September 18, 2023

VIA ELECTRONIC MAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Broadridge Financial Solutions, Inc.
Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

In a letter dated July 11, 2023, Broadridge Financial Solutions, Inc. (the "Company"), requested confirmation pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, that the staff of the Division of Corporation Finance would not recommend enforcement action to the U.S. Securities and Exchange Commission if the Company excluded a shareholder proposal (the "Proposal") submitted by James McRitchie (the "Proponent") from the proxy materials for its 2023 annual meeting of shareholders.

On September 14, 2023, the Proponent withdrew the Proposal. Accordingly, and in reliance thereon, the Company is withdrawing its no-action request relating to the Proposal.

If the Staff has any questions with respect to this matter, please contact me at maria.allen@broadridge.com or (516) 472-5472.

Very truly yours,

Maria Allen
Associate General Counsel
and Corporate Secretary

cc: Sanford Lewis
John Chevedden

David B.H. Martin
Matthew C. Franker
Covington & Burling LLP

Broadridge Financial Solutions, Inc.
5 Dakota Drive
Lake Success, N.Y. 11042
516-472-5472

broadridge.com