



6 June 2022

Securities and Futures Bureau
No. 85, Section 1, Xincheng South Road,
Da'an District
Taipei City
Taiwan

To Whom it May Concern,

Proposed Draft Amendments to Regulations Governing the Use of Proxies for Attendance at Shareholder Meetings of Public Companies

We are writing in response to the call for public comment on the Proposed Draft Amendments to Regulations Governing the Use of Proxies for Attendance at Shareholder Meetings of Public Companies issued by the Financial Supervisory Commission (the Commission) on 6 April 2022.

General comments

The proxy solicitation issue has been a source of difficulties in the Taiwan market for some time, and as evidenced by the number and severity of cases involved, we believe that the problems are systemic, long-standing, and deeply rooted. We welcome the proposed revisions to this regulation and commend the Commission for its willingness to take on this challenging issue. We interpret the tough approach taken by the regulator as a sign of its determination to firmly address this problem, which must be resolved to eliminate market distortion and disruption.

To this end, we express our heartfelt support for the proposed changes. Steps to enhance the professionalization of the proxy solicitation industry, “know your customer” rules and clear contracting requirements will benefit the market as a whole. We also appreciate the regulator’s “four red lines” of no buying proxies, no soliciting under another’s name, no over-solicitation, and no unqualified solicitation. We note these “lines” have been in the rule books for some time, but evidently without deterrent effect and so something must be done. Because the problems exist at the service provider level, to restore and maintain market discipline and order it is appropriate that enforcement also be taken at that level. Therefore, we support the Commission’s decision to add provisions that would bar those transgressing the “four red lines” from soliciting proxies for one year.

Specific comments

In addition to the changes as proposed, we encourage regulators to consider these issues:

1. Proxy solicitation “lock up”

There have been allegations that in the case of proxy battles, some parties have used the strategy of “locking up” the proxy solicitation market. In such cases, one side of a proxy battle signs contracts with the major proxy solicitation agencies making it difficult or impossible for the other side to solicit proxies. It is not clear where curbing this tactic is addressed in the regulations. We suggest forbidding this outright and setting hard limits on the number of agencies that can be engaged on each side of a proxy battle, including in cases of multiple parties working in concert.

2. Quorum requirements

One factor that is likely driving distortion in the market via proxy-handling channels is Taiwan’s high quorum requirements as outlined in Article 174 of the Company Act. These rules call for attendance by one half or more of voting shares at shareholder meetings. As ACGA understands it, in the 2020 AGM voting season, domestic and foreign institutional investors only accounted for about one-third of the total voting shares in the market, with most of the remaining shares held by retail investors, who are enticed with souvenirs to cast their votes so that quorum thresholds can be met. We would like to share that lower quorum thresholds are common in other markets and this reduces the need to incentivize retail shareholder participation with souvenirs, which in turn reduces the influence of intermediaries. Regulators may consider reviewing these quorum requirements.

3. Blank non-solicited proxies

Related to the issue of souvenirs, is the handling of blank non-solicited proxies. As ACGA understands it, many proxy handling agencies collect non-solicited proxies from retail shareholders and offer the service of distributing souvenirs for them and we are told it is not unusual for these proxies to be blank when submitted. We notice that proxy solicitation agencies may be incentivized to vote blank non-solicited proxies in support of shareholders that have signed proxy solicitation contracts with them, yet it is not clear where this is prohibited in the rules. We would appreciate further information on this.

4. Enforce against all involved parties

The proposed changes call for stiff punishment of those who transgress the so-called “four red lines”, and it appears that punishment is focused at the proxy-solicitation agency level. While we support this, we also encourage the regulator to focus enforcement attention on others who may have played a role in breaking the rules, including the shareholders themselves and other intermediaries. To help intermediaries comply with the rules, we would expect legislation spelling out strict punishments for soliciting shareholders that do not comply honestly with know-your-customer processes of soliciting agencies.

5. Require disclosure of seeking voting shares of 5% or more

Regulations Governing the Declaration of Acquisition of Shares in Accordance with Article 43-1, Paragraph 1 of the Securities and Exchange Act require that those who acquire, individually or jointly, 10% or more (5% after proposed amendments) of a listed entity to disclose this fact to the market and regulators within 10 days. We would like to see similar rules apply to those who seek to gain or who actually gain 5% or more of voting shares of a company, including via proxy solicitation as covered by the regulations under the present consultation. We encourage regulators to consider adding this as a fifth “red line”.

In conclusion, we support the proposed changes as a step toward strengthening existing regulations that have thus far not been able to demonstrate the desired deterrent effect. We commend the Commission for taking an assertive approach. We would be pleased to discuss any of the points in our letter further with you.

Yours sincerely,

A handwritten signature in black ink that reads 'NEESHA WOLF' with a stylized flourish at the end.

Neesha Wolf
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Supporting Research Director – Japan