

## No-Action Relief Granted With Regard To Certain Foreign Issuer Preliminary Proxy Filing Requirements

The staff (“Staff”) of the US Securities and Exchange Commission (the “SEC”) has provided no-action relief to certain foreign issuers that are subject to the SEC’s proxy rules. The relief allows these issuers to avoid filing preliminary proxy statements with the SEC where the only proposals being acted upon at the stockholders’ meetings are matters required by applicable foreign law or matters specifically exempted from preliminary proxy filing requirements by Rule 14a-6 under the Securities Exchange Act of 1934. These no-action letters are limited to foreign issuers organized under the laws of the jurisdictions examined in the applicable no-action requests with respect to the proposals specifically discussed in such letters.

Rule 14a-6 requires a preliminary proxy statement to be filed at least 10 calendar days before the filing of a definitive proxy statement, giving the Staff the opportunity to review and comment on the proxy statement before it can be finalized and released to stockholders. Rule 14a-6 provides only a few narrowly defined exceptions to the preliminary filing requirement. These exceptions are applicable to proxy statements for stockholders’ meetings where the only proposals being voted upon are the election of directors, approval or ratification of accountants, stockholder proposals, approval of a compensation plan and say-on-pay and say-when-on pay proposals. Foreign issuers that are required by law to routinely include proposals at stockholders’ meetings that do not fall within the

exempt categories of Rule 14a-6 have been required to adjust their proxy calendars to allow time to file preliminary proxy statements whenever they include such foreign law proposals. For some foreign issuers, this has resulted in preliminary proxy filings every year.

In *Schlumberger Limited* (January 31, 2014),<sup>1</sup> the Staff granted relief from preliminary proxy filings applicable to foreign issuers organized under the laws of Curaçao with respect to submission of a proposal to stockholders at each annual general meeting to report on the course of business during the preceding year and to approve financial statements and the declaration of dividends by the board of directors. In *Aon plc* (March 31, 2014),<sup>2</sup> the Staff provided comparable no-action relief for foreign issuers organized under the laws of England and Wales with respect to submission, at each annual general meeting, of proposals to:

- Receive the company’s annual accounts, including directors’ and auditors’ reports required by the Companies Act,
- Appoint the statutory auditor,
- Fix the remuneration of the statutory auditor or authorize the board of directors to fix it, and
- Approve, on an advisory basis, the annual report on directors’ remuneration.

In addition, the *Aon* letter provided no-action relief for a proposal to submit the director remuneration policy for binding stockholder

approval at least every three years, as well as a requirement for the stockholders to approve the aggregate amount of political donations or expenditures at least every four years.

## Practical Considerations

The two recent no-action letters on preliminary proxy filings by foreign issuers may only be relied upon by companies organized under the laws of Curaçao or England and Wales with respect to the required proposals discussed in those letters. However, the fact that the Staff was willing to grant such relief suggests that the Staff would be receptive to comparable no-action requests from foreign issuers organized in other jurisdictions that require specified proposals to be submitted to stockholders on a regular basis. Therefore, it may be worthwhile for such issuers that are subject to the SEC's proxy rules to submit no-action requests to the Staff explaining the routine proposals that their jurisdictions require for stockholder approval.

The type of foreign law proposals that appear to be good candidates for a successful no-action request are proposals where foreign law mandates that the proposal be regularly presented to stockholders for approval, as opposed to proposals initiated by the issuer to implement a company-sponsored initiative.

While the proxy season is well under way for calendar year companies, foreign issuers subject to the SEC's proxy rules that conduct stockholders' meetings later in the year may still have time to seek no action relief for preliminary filings in time for 2014 meetings. No-action requests may also be submitted with respect to preliminary proxy filings for subsequent years.

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*If you have any questions about the preliminary proxy filing requirements, please contact the author of this Legal Update, **Laura D. Richman**, at +1 312 701 7304, or any of the lawyers listed, or any other member of our Corporate & Securities practice.*

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**Endnotes**

<sup>1</sup> <http://www.sec.gov/divisions/corpfin/cf-noaction/2014/schlumberger-013114-14a-6%28a%29.htm>

<sup>2</sup> <http://www.sec.gov/divisions/corpfin/cf-noaction/2014/aon-033114-14a6.htm>

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