

April 21, 2020

Mr. John McCullough
 Lead Director
 First United Corporation
 19 South Second Street
 Oakland, MD 21550

Via Email to Tonya Sturm

Dear John,

First United's 2010 Proxy Statement¹ (the "Proxy Statement") contained a proposal ("Proposal 2" or the "Declassification Proposal"), approved by First United's Board of Directors (the "Board") that shareholders adopt a resolution approving an amendment to First United's Amended and Restated Articles of Incorporation (the "Charter") that would declassify the Board. In listing its reasons for Proposal 2, the Board noted that:

[A] classified structure may appear to reduce directors' accountability to shareholders, as such a structure does not enable shareholders to express a view on each director's performance by means of an annual vote. In addition, the Board recognizes that some investors consider adoption of a declassified board structure an emerging corporate governance "best practice" trend.

In articulating the "Required Vote," the Proxy Statement provides:

[T]he adoption of the Charter amendment requires the affirmative vote of shareholders holding at least two-thirds of all outstanding shares of common stock entitled to be voted at the Annual Meeting. *Brokers and other fiduciaries who hold your shares do not have discretion to vote on this proposal without your instruction. If you do not instruct your broker or other fiduciary as to how to vote on this Proposal 2, then your broker or other fiduciary will deliver a non-vote. Broker non-votes and abstentions, if any, will be counted for purposes of determining the presence of a quorum but will be treated as a vote against Proposal 2.* [emphasis added]

In the Form 8-K/A (the "Form 8-K/A")² filed to report the results of First United's 2010 Annual Meeting, the vote for Proposal 2 is presented as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
3,699,727.7635	733,076.0022	87,245.5681	7.0000

It is unclear why votes are expressed to the nearest ten-thousandth of a share—based on my extensive review of First United's public filings, I have not seen any evidence that First United has any fractional shares of stock issued and outstanding—and suggests that somehow votes were "split" despite there being no apparent procedure for doing such a thing. The fact that the Form 8-K/A also lists only "7.000"

¹ https://www.sec.gov/Archives/edgar/data/763907/000114420410016056/v178407_def14a.htm

² https://www.sec.gov/Archives/edgar/data/763907/000121390010002194/f8k051310a1_firstunited.htm

Broker Non-Votes with respect to Proposal 2, while there were “1,320,549.0000” Broker Non-Votes with respect to the election of directors also raises questions.

In addition to this oddity in the vote tallies, it would appear that First United’s statement that “[b]rokers and other fiduciaries who hold your shares do not have discretion to vote on [Proposal 2] without your instruction” was incorrect.

Broker voting is generally governed by Rule NYSE 452 and, while brokers are no longer permitted to vote on proposals to declassify boards of directors, that is a development that occurred subsequent to First United’s 2010 Annual Meeting. Indeed, in the Information Memo (“Information Memo 12-4”) sent to NYSE Members and Member Organizations on January 25, 2012 describing and announcing this change, NYSE Regulation, Inc. specifically notes that the Exchange (as defined in Information Memo 12-4, a copy of which is attached) had previously ruled “proposals to de-stagger the board of directors” as “Broker May Vote.”

As we recounted, describing the many ways in which the Board is entrenched, in our proxy statement,³ based on 6,158,650 shares of First United common stock issued and outstanding on July 31, 2010, 60.7% of the outstanding shares were voted in favor of the Declassification Proposal. Despite this very strong show of shareholder support in favor of declassifying the Board, as well as the reasons given by the Board in approving the Declassification Proposal, the Board failed to include a similar proposal in any subsequent proxy statements, calling into question their stated commitment to good corporate governance.

As noted above, on January 25, 2012, NYSE Regulation, Inc. issued Information Memo 12-4 announcing that discretionary broker voting with respect to proposals to de-stagger a board of directors would no longer be permitted. In the wake of Information Memo 12-4, several commentators have examined the difficulty in obtaining the vote to pass charter amendments requiring supermajority approval, particularly when insiders vote as block against the charter amendment.⁴ Consequently, to the extent that any irregularities associated with correctly soliciting and recording broker votes with respect to the Declassification Proposal may have prevented First United shareholders from approving a charter amendment to declassify the Board, as a result of Information Memo 12-4, First United Shareholders may be irreparably harmed.

Given the upcoming contested election of directors, I assume that you would wish to remove any hint of potential voting irregularity at any past annual meeting. To that end, I would appreciate it if you could, at your earliest possible convenience, provide:

- Support for First United’s statement in the 2010 Proxy Statement that brokers would not have discretion to vote on the Declassification Proposal;
- An explanation of why there were fractions of a share voted at the 2010 Annual Meeting;
- The report from the inspector of elections for the 2010 Annual Meeting as well any supporting back up documentation therefor;

³ https://www.sec.gov/Archives/edgar/data/763907/000092189520001159/defc14a12447002_04092020.htm

⁴ See, e.g., “Frozen Charters,” Scott Hirst, Yale Journal on Regulation 34: 91-166 (2017) available at <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1496&context=yjreg>

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- Any information in First United's possession indicating how Proposal 2 was coded (e.g., "Broker May Vote," "Broker May Not Vote," etc.) at Broadridge or any similar firm or any NYSE Member firm); and
- A record of how directors voted with respect to Proposal 2.

Thank you in advance for your prompt attention to this matter

/s/ J. Abbott R. Cooper

J. Abbott R. Cooper
Managing Member
Driver Management Company LLC