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SEC Proposes New Rules Requiring Universal Proxy Cards

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On October 26, 2016, the U.S. Securities and Exchange Commission proposed changes to the proxy rules to require the use of universal proxy cards in contested director elections. Universal proxy cards would permit shareholders to vote by proxy for their preferred combination of director candidates instead of having to choose between competing slates of directors presented on either the registrant's or a dissident's proxy card, as they could do if they voted in person at the shareholder meeting.

The SEC expressed that the proposed rule changes are meant to remove the disparity between voting by proxy and voting in person. Chair Mary Jo White highlighted the SEC's interests in improving the voting process and treating registrants and dissidents in an equitable manner in contested elections, while continuing to require dissidents to independently advance their own solicitations.

Below is a summary of the proposed changes as announced in the October 26, 2016 SEC open meeting. The proposal's full text is not yet published.

Current Standard: Generally in a proxy contest, the practicalities of voting in person and voting by proxy are different. Shareholders voting in person may freely choose individual nominees for director whether proposed by the management of a registrant or a dissident shareholder. In contrast, shareholders voting by proxy must choose between competing slates of directors in their entirety as presented on one of the two proxy cards provided.

Proposed Rule Changes would:

- Permit shareholders to vote by proxy for their preferred combination of board candidates by requiring proxy contestants to provide shareholders with a universal proxy card that includes the names of both registrant and dissident nominees.
- Enable parties to include all nominees on their universal proxy card by amending the definition of a "bona fide nominee" to include a person who agrees to be named in *any* proxy statement that relates to the next shareholder meeting at which director elections will take place.

- Require dissidents to provide the registrant the nominees for whom it intends to solicit proxies no later than 60 calendar days prior to the anniversary of the previous year's annual meeting and require the registrant to provide the dissidents with its management-proposed nominees no later than 50 calendar days prior to the same date.
- Require dissidents to file their definitive proxy statement with the SEC by the later of 25 calendar days prior to the meeting date or five calendar days after the registrant files its definitive proxy statement.
- Require dissidents to solicit shareholders representing at least a *majority* of the voting power of those shares that are entitled to vote in the director election.
- Require proxy contestants to refer shareholders to the other party's proxy statement for information about that party's nominees and inform them that it is available on the SEC's website free of charge.
- Require universal proxy cards to include an "against" voting option when that vote has a legal effect and an "abstain" voting option in an election governed by a majority voting standard.
- Eliminate the current ability to provide a "withhold" voting option when an "against" vote has a legal effect and require the disclosure of the effect of a "withhold" vote.

The proposal passed its initial stage by a vote of 2 to 1. The SEC will take public comments on the proposal for 60 days and subsequently vote a second time before adopting the final rule. SEC Chair Mary Jo White's public statement at the open meeting is available [here](#), and the press release is available [here](#). Chair White expressed she is especially looking forward to receiving comments on the logistical and technical aspects of the proposal.