

Fact Sheet

Universal Proxy

SEC Open Meeting Oct. 26, 2016

Action

The Commission will consider whether to propose amendments to the proxy rules to require the use of universal proxy cards that would include the names of all nominees in contested board of directors' elections. The rule amendments, which would enable shareholders to vote by proxy in a way that more closely resembles how they can vote in person at a shareholder meeting, would make it easier for shareholders to vote for the combination of candidates they prefer. The Commission also will consider amendments to specify the applicable voting options and voting standards in all director elections.

Highlights

The proposed amendments to implement a universal proxy card would apply to parties soliciting proxy authority to vote Exchange Act-registered securities.

Proposed Amendments to Implement Universal Proxy

Under the proposed amendments:

- Proxy contestants would be required to provide shareholders with a universal proxy card that includes the names of both management and dissident nominees, which would allow shareholders to vote by proxy for the combination of nominees of their choice. Universal proxy cards would be required in all non-exempt solicitations in contested elections

- The definition of a “bona fide nominee” in Rule 14a-4(d) would be changed to include a person who agrees to be named in any proxy statement relating to a company’s next meeting of shareholders at which directors are to be elected. The amendment would enable parties to include all director nominees on their universal proxy cards.

- The “short slate rule,” Rule 14a-4(d)(4), would be eliminated because universal proxy cards would make it unnecessary for dissidents to round out their partial slates with management’s nominees

- Proxy contestants would be required to notify each other of their respective director candidates. A dissident would be required to provide a company with the names of 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 date. The company would be required to provide the dissident with the names of the nominees for whom the company intends to solicit proxies no later than 50 calendar days prior to the anniversary of the previous year’s annual meeting date.

- Dissidents would be required to solicit shareholders representing at least a majority of the voting power of shares entitled to vote on the election of directors

- Proxy contestants would be required to refer shareholders to the other party’s proxy statement for information about that party’s nominees and explain that shareholders can access the other party’s proxy statement for free on the Commission’s website. To ensure that shareholders who receive a universal proxy card will have access to information about all nominees a sufficient amount of time before the meeting, dissidents would be required to file

their definitive proxy statement with the Commission by the later of 25 calendar days prior to the meeting date or five calendar days after the registrant files its definitive proxy statement.

- Universal proxy cards would be subject to presentation and formatting requirements to help ensure that universal proxy cards clearly and fairly present information

The proposed changes to require a universal proxy card would not apply to solicitations involving foreign private issuers or companies with reporting obligations only under Section 15(d) of the Exchange Act, which are not subject to the federal proxy rules, or registered investment companies or business development companies.

Proposed Amendments Relating to Voting Options and Standards in All Director Elections

The proposed amendments relating to voting options and standards in director elections would apply to all solicitations that are subject to the proxy rules.

Under the proposed amendments to Rule 14a-4(b), proxy cards would be required to include an “against” voting option for the election of directors when there is a legal effect to a vote against a nominee and to provide shareholders the ability to “abstain” in a director election governed by a majority voting standard. The proposed change would eliminate the current ability to provide a “withhold” voting option when an “against” vote has legal effect. In addition, the proposed amendments to Item 21(b) of Schedule 14A would require disclosure about the effect of a “withhold” vote in an election of directors.

Background

Currently, shareholders voting by proxy in a contested election are not generally able to replicate the vote they could cast if they voted in person at a shareholder meeting because the choices

available to shareholders voting for directors through the proxy process typically are not the same as those available to shareholders voting in person at a shareholder meeting.

Shareholders who attend a meeting in person generally vote by casting a written ballot provided at the meeting, which includes the names of all duly nominated candidates for the board of directors. In contrast, in the proxy solicitation process, management's director nominees are typically presented as one slate in a company's proxy statement and proxy card, and the dissident's full or partial slate of nominees is presented in another. As a result, shareholders voting by proxy generally must submit their votes on either the company's or the dissident's proxy card and cannot choose a combination of nominees from both cards.

Under current Rule 14a-4(d), one party may not include the other party's nominees on its proxy card unless the other party's nominees consent to be named in its proxy statement. Since such consent is rarely provided, shareholders are limited to voting on the slates of nominees chosen by the soliciting parties.

What's Next?

The Commission will seek public comment on the proposed rules for 60 days.