

Statement

Statement on Universal Proxy



Commissioner Caroline A. Crenshaw

Nov. 17, 2021

Congratulations to the rulemaking team from the Division of Corporation Finance, as well as the staff within the Division of Economic and Risk Analysis and the Office of the General Counsel. This rulemaking has been several years in the making,^[1] and I am glad that we are here today to finalize it.

The reality of modern board of director elections is that few shareholders attend a corporation's annual meeting in-person to vote.^[2] The ramifications of this are meaningful. Proxy voters in contested Board of Directors elections are usually unable to choose a mix of dissident and management nominees.^[3] By contrast, those who vote in person, can.

The amendments before us serve a simple and important purpose: to ensure that shareholders can, by proxy, cast votes for a mix of management's slate of director candidates and a dissident's slate of director candidates in contested elections. Just as any shareholder who casts their vote in-person at the shareholder's annual meeting is able to do.

In some contexts, uniformity can bring about fairness and efficiency. And today's rule achieves that by mandating the use of universal proxy cards.^[4] This change has been supported by a broad swath of investors and market participants, and is informed by the work of the SEC's Investor Advisory Committee.^[5] Thank you to all of those that have helped advocate for this much needed and common-sense improvement to shareholder democracy.

And thank you again to the staff who have worked on this rulemaking over the years, to the team who brought this across the finish line, and to Corey Klemmer in Chair Gensler's office.

^[1] See [Universal Proxy](#), Release No. 34-79164 (proposed Oct. 26, 2016). Further, the impediment that today's adopting release addresses has been noted for decades. See [Recommendations of the Investor Advisory Committee \(IAC\) Regarding SEC Rulemaking to Explore Universal Proxy Ballots](#) (July 25, 2013) (recommending that the Commission should relax the "bona fide nominee" rule so that proxy contestants can use universal proxy cards); Mary L. Schapiro, Commissioner, Sec. & Exch. Comm'n, [Remarks Before the National Investor Relations Institute's Fall Conference](#) (Nov. 6, 1992) (noting that in adopting the bona fide nominee rule, "[t]he Commission chose a partial solution to the problem, opting not for the most simple approach that would permit the inclusion of some management nominees on the dissident's proxy").

^[2] State statutes require corporations to hold these annual meetings for the purpose of electing directors. See [Universal Proxy](#), Release No. [] at 6 (adopted Nov. 17, 2021) [hereinafter Adopting Release].

^[3] Due to state laws, when a proxy voter submits more than one proxy voting card, only the most recently submitted card is counted and the earlier-dated card is invalidated. See Adopting Release at 8-9. Federal law

provides that, in an election contest, one party cannot include the other party's nominees on its proxy card with the consent of that nominee, and such consent is rarely provided. *See id.* Thus, investors voting by proxy have to cast their vote on one party's proxy card and cannot mix and match candidates from different proxy cards. *See id.*

[4] *See id.* at 10-11.

[5] *See* [Recommendation of the Investor Advisory Committee \(IAC\): Proxy Plumbing](#) (Sept. 5, 2019).