

Statement

Statement on Universal Proxy Rules



Commissioner Elad L. Roisman

Nov. 17, 2021

Good morning.

Thank you to the staff who worked on this rulemaking.

I support adopting this rule. I see no compelling reason to prevent shareholders from mixing and matching their votes between a management and dissident slate, given that shareholders who attend meetings are already able to vote in this way.

I would have preferred, however, that today's rule include certain additional changes and believe we should continue to consider those going forward. First, I believe we should have given greater consideration to having this rule apply to funds. I have heard no clear argument for why they should be treated differently than operating companies for these purposes. I hope that the Commission will take up this issue again in the near future and, if appropriate, expand the rule to include funds or explain why such an approach is unsuitable.

I also would have preferred that the rule require those launching a proxy contest to meet certain eligibility criteria, such as thresholds of ownership in the target company or holding periods for the company's stock. Such criteria would demonstrate that a dissident has an economic stake or investment interest in the target company. This is not unprecedented; we require eligibility criteria that includes ownership and holding period stakes for shareholders to submit proposals for a company meeting.^[1] Today's rule includes no similar eligibility requirements, which seems discordant with the approach we have taken in such other rules. I worry that the effect of not having such criteria may make it too easy to launch a proxy contest, which can impose considerable costs on a company and by extension all of its shareholders.

The solicitation threshold in the final rule serves somewhat of the same purpose as eligibility requirements in that it obliges the dissident to reach out to some amount of shareholders. The inclusion of this threshold is a large reason that I am able to support the rule. But, it is not clear to me that the 67 percent solicitation threshold is the right percentage and whether it will operate as a proper substitute for an ownership and duration threshold. I hope that we will monitor the effects of the final rule going forward and revisit whether the percentage is set either too low or too high.

I must also sound a note of caution about what I see as some of the inevitable indirect effects of this rule. Beyond potentially increasing proxy contests, I worry that the rule will put even more power in the hands of the proxy advisory businesses. As an article in the Institutional Investor noted, the pressure that dissidents face in securing the support of proxy advisory firms is significant.^[2] While these firms do not directly select a dissident's nominees for a target company's board, success in a proxy contest seems generally dependent on their support. If it is easier to launch proxy contests, proxy advisory firms' influence will increase in line with the increased desire of dissident shareholders to replace current directors with their own candidates.

In sum, I would prefer a slightly different rule. Ultimately, however, I believe that there are benefits to a universal proxy regime. Therefore, I support adopting this rule today.

[1] 17 C.F.R. § 240.14a-8(b).

[2] See Michelle Celarier, “The Mysterious Private Company Controlling Corporate America,” *Institutional Investor*, Jan. 29, 2018, available at www.institutionalinvestor.com/article/b16pv90bf0zjb8/the-mysterious-private-company-controlling-corporate-america.