



Securities Law ALERT ■

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SEC Proposed Rules on Universal Proxy Cards

At an open meeting held today, the Securities and Exchange Commission (SEC) voted 2 to 1 to propose amendments to the proxy rules relating to the use of universal proxy cards and require provision of additional voting options and disclosure regarding voting standards in director elections. Under current proxy rules, in a contested election two separate proxy cards are used to vote, one card for management's slate of directors and a separate card for the investor candidate's slate, so voters voting via proxy must choose one or the other. An investor voting in a contested election must attend the shareholder meeting in person if he or she wants to vote for individual directors from each slate. A universal proxy card or ballot would eliminate this discrepancy between the options available via proxy versus in person by allowing a shareholder not attending the meeting to be able to pick candidates from both management and investor slates.

The full text of the proposals is not yet available, so the description provided here is based on statements made by the commissioners and staff at the open meeting. We intend to prepare a more comprehensive advisory as soon as the text of the proposed rules becomes available.

What Are the Proposed Rules?

In discussing the proposed rules today, the SEC emphasized that the overarching goal of the proposed rules is to remove the difference between the voting options afforded to a shareholder who attends the shareholder meeting and votes in person as opposed to a shareholder who votes by proxy. The SEC emphasized that the proposed rules should assist in creating a proxy voting process that replicates the in-person shareholder voting process. The proposed amendments include:

- **Revisions to the consent required of a bona fide nominee.** A nominee would be required to consent to being named in any proxy statement relating to the registrant's next meeting of shareholders at which directors are to be elected, as opposed to the current requirement to consent to being named in each proxy statement separately.
- **Requirements that the dissident provide notice to the registrant.** Dissidents would be required to provide registrants with notice of their intent to solicit proxies in support of their own nominees, and the names of such nominees, no later than 60 calendar days before the anniversary of the previous year's annual meeting date.
- **Requirements that the registrant provide notice to the dissident.** Registrants would be required to provide dissidents with notice of the names of the registrant's nominees no later than 50 calendar days before the anniversary of the previous year's annual meeting date.
- **Filing requirements for dissident proxy statements.** Dissidents would be required to file their definitive proxy statement by the later of 25 calendar days before the meeting date or five calendar days after the registrant files its definitive proxy statement.
- **Dissident solicitation requirements.** Dissidents would be required to solicit the holders of shares representing at least a majority of the voting power of shares entitled to vote on the election of directors. Dissidents would not have to solicit or provide hard copies of written materials to all shareholders.

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- **Presentation and formatting requirements.** The proposed rules would prescribe requirements for the format of the universal proxy cards to ensure that each party's nominees are presented in a clear and impartial manner.
- **Revisions to required voting options in director elections.** Proxy cards would be required to (1) include an "against" voting option when applicable state law gives effect to a vote against a nominee; (2) include an "abstain" voting option in director elections where a majority voting standard is in effect; and (3) not include a "withhold" voting option when applicable state law gives effect to a vote "against" a nominee.
- **Additional disclosure requirements regarding "withhold" votes.** When a "withhold" vote is allowed, registrants would be required to provide additional disclosure in their proxy statements about the effect of a "withhold" vote in an election of directors.

What's Next?

Following approval by the SEC today, market participants and those affected by the proposed rule can comment and express their concerns with, or support of, the proposed changes during the upcoming public comment period. The commissioners themselves disagreed on the usefulness of the proposed rules during the meeting. Chair Mary Jo White and Commissioner Kara Stein spoke favorably of the changes and how affording shareholders who are unable or unwilling to attend the shareholder meeting the same voting rights as those who attend in person is an important pursuit. Commissioner Michael Piwowar expressed his concern that the changes would increase the number of proxy fights and distract companies from the operation of their businesses, and would make it easier for shareholders with special interests to attempt to further their own agendas even though they may not have the best interests of all shareholders in mind. Commissioner Piwowar also expressed his concern that the proposed rules would disproportionately affect retail investors who are accustomed to receiving hard-copy proxy statements.

Comments can be submitted through the SEC's website for 60 days following the publication of the request for comment in the *Federal Register*, which should occur in the next several weeks.

Other Actions

In today's meeting, the SEC also unanimously approved final rules related to intrastate offerings, including new Rule 147A and amendments to Rule 504. A more in-depth discussion of those developments will be contained in an upcoming advisory.

For other related securities advisories, click [here](#). If you would like to receive future *Securities Law* advisories electronically, please forward your contact information to securities.advisory@alston.com. Be sure to put "subscribe" in the subject line.

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