

Securities Regulation & Corporate Governance Alert

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SEC Proposes Rule Amendments to Require Universal Proxy Cards

On October 26, 2016, the U.S. Securities and Exchange Commission (SEC) voted 2-to-1 to propose amendments to the proxy rules that would require the use of universal proxy cards in contested elections. The proposed changes, if adopted, would give shareholders the ability to vote for their preferred combination of nominees from competing slates without having to attend the shareholder meeting. Under the proposed rules:

- Companies and dissidents would be required to provide shareholders with a proxy card that lists the names of all nominees, clearly distinguishing between company nominees, dissident nominees and proxy access nominees and listing nominees within each group in alphabetical order.
- A nominee for election as a director would have to agree to be named in any proxy statement relating to a company's next meeting of shareholders at which directors are to be elected.
- Management and dissidents would be required to provide each other with timely notice of the names of their nominees (separate from any notice required under a company's advance notice bylaw). Dissidents also would be subject to a filing deadline for their definitive proxy statement and required to solicit shareholders representing at least a majority of the shares entitled to vote on the election of directors.
- The SEC's "short slate rule," permitting dissidents to nominate candidates for a minority of board seats and identify company nominees they would not vote for, would be eliminated as no longer necessary under a mandatory universal proxy card regime. The SEC's "short slate rule," permitting dissidents to nominate candidates for a minority of board seats and identify company nominees they would not vote for, would be eliminated as no longer necessary under a mandatory universal proxy card regime.

The proposed universal proxy card rules would not apply to election contests at registered investment companies or business development companies.

The SEC also proposed amendments requiring companies with majority voting standards in director elections to provide "against" and "abstain" options on proxy cards and requiring companies with plurality voting standards to disclose the effect of a "withhold" vote.

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Although the timing of any final rules implementing universal proxy cards is uncertain, it is highly unlikely that any new rules would be in effect for the 2017 proxy season. We will continue to monitor developments relating to the proposed rules and provide additional guidance as appropriate.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register. A copy of the proposing release for the universal proxy rules is available [here](#), a copy of the press release issued by the SEC regarding the proposed rules is available [here](#) and a copy of Chair Mary Jo White's statement about the proposed rules is available [here](#).

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