

Client Alert

October 2016

SEC Takes Initial Step to Require “Universal” Proxy Ballots in Contested Elections

On October 26, 2016, the Commissioners of the Securities and Exchange Commission voted 2-1 to propose to require universal proxy ballots in contested elections. Universal proxies would include all management and dissident nominees on one proxy card from which shareholders would vote. Proponents of universal proxies believe that under the current federal proxy regime where separate proxy cards are disseminated by the dissident and management listing their respective competing slates, it is too difficult for shareholders to mix and match their votes among all candidates, thereby disenfranchising shareholders and undermining corporate governance in the United States. Under the current rules and proxy voting mechanics, a shareholder who desires to split votes generally must attend the shareholders meeting and vote by ballot.

In the SEC’s press release announcing this development, SEC Chair Mary Jo White stated, “The proposed changes would allow shareholders to vote by proxy in a manner that more closely replicates how they can vote in person at a shareholder meeting.”

The proposed rules, among other things, would require the dissident and the company to provide each other with notice of the names of their respective director candidates, establish a deadline for filing the dissident proxy statement and provide for a minimum solicitation requirement for the dissident. The universal proxy cards would also be subject to presentation and formatting requirements. The proposed rules would not apply to solicitations involving foreign private issuers. A “Fact Sheet” published by the SEC further elaborating on the proposed rules can be viewed [here](#).

It should be very interesting to see all the details of the proposed rules, including the procedures the company and the dissident will be required to follow regarding the form of the card, how the card must be formatted to ensure that both slates have equal prominence and mechanics for voting electronically.

We will monitor the SEC rulemaking process and provide updates. For more information on this topic, please contact the Olshan attorney with whom you regularly work or any of the attorneys listed below.

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