

Universal Proxy Rules for Director Elections



The Securities and Exchange Commission (SEC) amended the federal proxy rules to require the use of universal proxy cards by management and shareholders soliciting proxy votes for their own candidates in contested director elections. A universal proxy card lists the names of all duly-nominated director candidates for election at an upcoming shareholder meeting, regardless of whether the candidates were nominated by management or shareholders. The SEC also adopted rule amendments to require enhanced disclosure and voting options in all director elections.

Background

Currently, shareholders voting by proxy in contested director elections are unable to vote for a combination of director nominees from competing slates as they could if they voted in person at the shareholder meeting. Universal proxy cards, which list all duly-nominated director candidates from all parties, allow shareholders to vote through the proxy process in the same manner as they could by voting in person. In 2016, the Commission proposed rules requiring the use of universal proxy cards in director election contests. In April 2021, the Commission reopened the comment period for the 2016 proposal.

What the New Rules Do

The Commission adopted final rules requiring the use of universal proxy cards by management and shareholders soliciting proxy votes for their candidates in director election contests. Under new Rule 14a-19, the universal proxy card must include all director nominees presented by management and shareholders for election at the upcoming shareholder meeting. To facilitate the use of universal proxy cards, the Commission amended the current proxy rules so each side can list the other side's director candidates on its universal proxy card. The new rules also establish new notice and filing requirements for all soliciting parties, as well as formatting and presentation requirements for universal proxy cards. In addition, the final rules require shareholders presenting their own director candidates in the contest to solicit holders of a minimum of 67 percent of the voting power of shares entitled to vote in the election. Registered investment companies and business development companies are not subject to the universal proxy rules.

The final rules establish new requirements for all director elections, including uncontested elections. They mandate that "against" and "abstain" voting options be provided on a proxy card where such options have legal effect under state law. The rules also require disclosure in the proxy statement about the effect of all voting options provided.

What's Next

The final rule amendments regarding universal proxy will apply to all shareholder meetings involving contested director elections held after August 31, 2022. The rule amendments regarding voting options will be applicable to all shareholder meetings involving director elections held after August 31, 2022.

Additional Information:

The final rules will be effective 60 days after the date of publication in the Federal Register.