



November 6, 2018

By email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. 4-725 SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields,

Mediant Communications Inc. appreciates the opportunity to submit this letter regarding certain U.S. proxy voting issues in advance of the upcoming SEC Staff Roundtable on the Proxy Process. We previously commented on the mechanics of the proxy voting process,<sup>1</sup> and on how to increase retail shareholder participation in that process.<sup>2</sup> In this letter we wish to communicate our strong support for requiring the use of a universal proxy ballot in contests for the election of directors.

Mediant delivers investor communications and technology solutions to leading banks, brokers, corporate issuers, funds and investment advisors. We are a premier provider of proxy services which include the distribution of electronic and printed proxy materials and processing votes of beneficial owners for our bank and broker clients. We perform similar functions for corporate and mutual fund issuers and their registered shareholders, as well as act as master tabulator for shareholder meetings. In this role we are responsible for validating and applying the votes cast. Given our substantial involvement in the process of soliciting and counting votes in contested elections, we are well aware of the difficulties and complexities involved. As a result, we are convinced that requiring the use of universal proxy ballots will greatly reduce shareholder confusion and simplify processing, to the benefit of everyone involved.

As we stated in our October 24<sup>th</sup> comment letter, we believe that the U.S. proxy voting system works well, but that there is room for incremental improvement. One area in which such improvement would be welcome, is the obtaining, processing and applying of shareholder votes in contested elections. These contests can be inherently complex, with shareholders often being solicited multiple times with competing ballots from management and the dissident. The votes returned must be reviewed to ensure only the latest ballot is counted and that the votes are marked properly. We believe that a requirement that both sides use a universal proxy ballot in contested elections, as was proposed by the SEC in November 2016,<sup>3</sup> would reduce complexity and assure more cost-effective and accurate voting in contested elections. We expect it would also reduce the number of solicitations because an investor would clearly see all the options at once and can make a single, well informed decision on how to vote.

An important policy objective of the SEC was to allow shareholders to cast votes for director nominees across both management's and the dissident's slates in a way that would replicate the in-person voting process available if one is able to attend the shareholders' meeting. We agree that this would be a valuable enhancement to the entire fairness of the proxy voting process in contested elections.

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<sup>1</sup> Letter from Sherry Moreland, President and Chief Operating Officer of Mediant Communications Inc., dated October 24, 2018.

<sup>2</sup> Letter from Sherry Moreland, President and Chief Operating Officer of Mediant Communications Inc., dated November 1, 2018

<sup>3</sup> SEC Release Number 34-79164; 81 FR 79122 (November 10, 2016).



***More precise presentation and formatting rules are needed***

We applaud the SEC for the thought and effort it put into the 2016 proposal. While we support that proposal, we think that to ensure the maximum success of a universal proxy ballot regime, there are certain ways in which the proposal needs additional precision to maximize its effectiveness.

In this regard, we support the comments put forth on the 2016 proposal by the Securities Industry and Financial Markets Association (SIFMA) in its letter dated January 11, 2017. SIFMA's comments suggested that the proposal would benefit from clearer presentation and formatting rules. Since shareholders will receive cards from both management and the dissident, we believe it will be important that the appearance and presentation of information on the cards be essentially identical.

***There should be rules governing the treatment of mismarked proxy ballots***

We also agree with SIFMA's call for rules governing the treatment of mismarked proxy ballots. Identical ballots will reduce confusion, but the possibility would remain that shareholders can make mistakes when the number of nominees on a ballot exceeds the number of director positions open for vote. While proxies that are voted electronically will have safeguards to assure the votes do not exceed the permitted parameters, it is not possible to do the same with paper ballots, although we support presentation requirements that will do as much as possible to clarify this issue for shareholders using paper ballots. We would support a reasonable process for the return to shareholders of mismarked ballots so that they can be marked correctly. Time may not always permit the completion of such a revote, but the chance to secure a compliant ballot is worth taking when the alternative is loss of a vote due to disqualification. Of course, we also believe it should be clear that the proponent of a mismarked ballot should be responsible for the cost of the return and resubmission, including the processing costs involved.

***Require dissidents to solicit all shareholders***

We suggest one other change to the 2016 proposal, regarding the proportion of the shareholder population that must be solicited by the dissident. In its proposal, the SEC provided that a dissident must solicit at least a majority of the voting power of shares entitled to vote on the election of directors. We believe that essential fairness, and the desire to reduce complexity in the process, means that dissidents should be required to solicit all shareholders, as is required of management.

It is not unusual for a majority of the voting power of a company to be held by institutional investors. In these cases, the effect of the SEC's proposal could easily be that retail shareholders would not receive the dissident's solicitation, leaving them to search the SEC's website for the dissident's materials and an explanation of the background of the additional nominees on the proxy ballot received from management. In addition to the questionable fairness of this disparate treatment, this cannot help but contribute to confusion among the retail shareholder population. Requiring dissidents to solicit all shareholders will ensure that retail shareholders are fully informed regarding all the nominees and give them the opportunity to vote with all the needed information at hand.

***The rule as amended should be repropose for comment***

We believe that Mediant's systems and technology are ready to handle a required universal proxy ballot as proposed by the SEC. Mediant's work with Non-U.S. issuers has required that we develop systems capable of dealing with a wide range of complex voting structures, and while there may be some need to slightly adjust systems to fit new U.S. requirements, we are optimistic that could be accomplished relatively quickly. However, we urge the Commission to not only proceed with a universal proxy requirement, with the enhancements we have discussed, but to also release a revised rule for additional comment, so that all involved will have the chance to consider the proposal's impact and further examine the changes and how best to address them.



Thank you for the opportunity to comment on the desirability of requiring the use of a universal proxy ballot in contests for the election of directors. If we can answer any questions or provide any additional information, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sherry M. Moreland', written in a cursive style.

Sherry Moreland  
President & Chief Operating Officer

cc: The Honorable Jay Clayton, Chair  
The Honorable Kara M. Stein, Commissioner  
The Honorable Robert J. Jackson Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
William Hinman, Director, Division of Corporation Finance  
Dalia Blass, Director, Division of Investment Management