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09 January 2017

Re: Universal Proxy (File No. S7-24-16)

CFA Institute[1] appreciates the opportunity to offer comments to the U.S. Securities and Exchange Commission ("SEC" or the "Commission"), on the Universal Proxy.

CFA Institute believes that all investors should have the equal ability to vote for board nominees of their choosing when voting for corporate boards. Currently, in contested elections investors can only vote for a combination of members from a board sponsored slate and a dissident slate if they attend a company's annual general meeting in person. We commend the SEC for addressing this shortcoming of the board voting process by introducing a new Universal Proxy ballot rule that will allow shareowners to effectively split their voting ticket if they chose to do so – without having to attend a company's annual meeting in person.

Summary

The SEC is proposing amendments to the federal proxy rules to require the use of universal proxies in all non-exempt solicitations in connection with contested elections of directors other than those involving registered investment companies and business development companies. The proposal would require the use of universal proxies that include the names of both registrant and dissident nominees and thus allow shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting by mixing and matching both company and dissident nominees if they so choose. The SEC also proposes amendments to the form of proxy and proxy statement disclosure requirements to specify clearly the applicable voting options and voting standards in all director elections.

The proposal is designed to address the current inability of shareholders to vote for the combination of board nominees of their choice in an election involving a proxy contest. Under the proposal, each party in a contested election – management and one or more dissident shareholders – would continue to distribute its own proxy materials and use its own proxy card to solicit votes for its preferred slate of nominees. However, each party's proxy card would be

[1] CFA Institute is a global, not-for-profit professional association of more than 131,000 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of whom nearly 123,700 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 144 member societies in 69 countries and territories

required to include the nominees of all parties, and thus enable the proxy voter to select its preferred combination of candidates.

Although the current proxy rules allow a soliciting party to provide shareholders with the full selection of nominees if all such nominees have consented to being named on its proxy card, aspects of the current proxy rules and the parties' strategic interests typically result in limiting shareholders' choice to the slates of nominees chosen by the soliciting parties.

In 1992 the SEC introduced changes to proxy rules that allows for a "short-slate" of nominees to be proposed by an investor, however the short slate only allows an investor to vote for or against the slate recommended by either the issuer or the investor – and not mix and match the directors they prefer – as the universal proxy rule would do. Shareowners can currently only mix and match nominees from issuers and investors slates if they attend the annual meeting in person.

Request for Comment

A. Bona Fide Nominees and the Short Slate Rule

The current proxy rules limit the ability of parties in a contested election to include the names of all nominees on their proxy card. Exchange Act Rules 14a-4(d)(1) and 14a-4(d)(4) provide that no proxy may confer authority to vote for any nominee unless that nominee has consented to being named in the proxy statement and to serve if elected. As a result, a party in a contested election cannot include on its proxy card a nominee from the opposing party without the express authorization of that nominee, which is rarely provided. These proxy rules, along with state law rules regarding the effect of later-dated proxy cards, effectively create a system in which parties to a contested election distribute their own proxy cards that include only a subset of all director nominees. Ultimately, these limitations restrict the voting choices available to shareholders using the proxy process, as these shareholders are unable to use a proxy to vote for a combination of nominees of their choice.

The Commission sought to address some of the concerns about shareholders' inability to split their vote between the registrant's and the dissident's proxy cards through the adoption of the short slate rule. The short slate rule permits a dissident seeking to elect a minority of the board to solicit authority to vote for some of the registrant's nominees on its proxy card. However, to comply with Rule 14a-4(d)(4), the dissident is only permitted to include on its proxy card the names of the registrant's nominees for whom it will not vote. While this rule provides shareholders with some additional choices in the proxy voting process, shareholders wishing to vote for nominees for all of the board seats up for election are still limited to voting by proxy for the combination of nominees that either the dissident or registrant chooses. Moreover, the short slate rule does not contemplate a registrant proposing a partial slate of nominees (or nominating less than the total number of directors to be elected), a tactic that may be advantageous for some registrants.

1. Revision to the Consent Required of a Bona Fide Nominee

To allow for proxy cards that reflect the complete choice of candidates for election, the SEC is proposing amendments to Rule 14a-4(d) to change the definition of "bona fide nominee" for registrants other than investment companies registered under Section 8 of the Investment Company Act of 1940 ("funds") and business development companies as defined by Section 2(a)(48) of the Investment Company Act of 1940 ("BDCs"). Proposed Rule 14a-4(d)(1)(i) would define a bona fide nominee as a person who has consented to being named in a proxy statement relating to the registrant's next meeting of shareholders at which directors are to be elected. This would effectively expand the scope of a nominee's consent to include consent to being named in any proxy statement for the applicable meeting. By changing the requirement that a person consent to being named in "a" proxy statement instead of being named in "the" proxy statement, parties in a contested election will be able to include all director nominees on their proxy cards, rather than only those nominees who have consented to being named on that particular party's proxy card. This change would remove a current impediment to a registrant or a dissident including the other party's nominees on its proxy card.

1. We are proposing to amend Rule 14a-4(d)(1) to change the requirement that a nominee consent to being named in "the" proxy statement to require that the nominee consent to being named in "a" proxy statement for the next meeting at which directors are to be elected. This change would enable parties in a contested election to include all director nominees on their proxy card, including nominees of an opposing party. Should we amend the requirement as proposed? Why or why not? Could there be potential concerns with opposing parties naming nominees of the other party on their proxy card? Please explain. How can we address or mitigate any such concerns?

CFA Institute agrees with this proposed amendment. We believe that requiring a nominee to only consent to being named on "a" proxy card will clear the way for each nominee to be listed on all proxy cards, allowing shareowners more choice in selecting directors.

2.Should the proposed amendments to Rule 14a-4(d)(1) be adopted without proposed Rule 14a-19, which would require the mandatory use of universal proxies? Why or why not? If only the proposed amendments to Rule 14a-4(d)(1) were adopted and a party in a contested election had the option, but was not required, to include all director nominees on its proxy card, would proposed Rule 14a-4(d)(1) further the goal of effectively facilitating shareholders' ability to vote by proxy for director nominees as they could vote in person at a meeting? Why or why not?

We encourage mandatory use of universal proxies in order to best facilitate a shareowner's ability to vote by proxy for their choice of director nominees. A mandatory universal ballot would provide shareowners with a low-cost way to vote in a manner that is currently available only to those who attend the annual meeting. If the universal proxy was not mandatory in contested

elections shareowners could face different standards for different elections – leading to suboptimal choices of director combinations for some shareowners.

2. Elimination of the Short Slate Rule

The SEC is proposing revisions to Rule 14a-4(d) to eliminate the short slate rule for registrants other than funds and BDCs. The short slate rule was adopted to mitigate concerns about a dissident's inability to allow shareholders to vote on its proxy card for all board seats up for election when soliciting in support of a partial slate of nominees. Proposed Rule 14a-4(d)(1)(i) would permit a proxy to confer authority to vote for a nominee named on a proxy card if that nominee consented to being named in any proxy statement for the applicable meeting. Additionally, each party in a contested election would be required to include on its proxy card all candidates that have consented to being named on a proxy card for the applicable meeting. Thus, if a dissident solicits proxies in support of a partial slate of nominees, our proposed rules would permit shareholders to vote for any combination of registrant and dissident nominees in order to cast a vote for a full slate of directors. As a result, the short slate rule would no longer be necessary to accomplish its intended purpose. While the elimination of the short slate rule would take away the ability of a dissident to select the registrant nominees it prefers to round out its slate of nominees, the dissident still would have the ability to include recommendations for its preferred registrant nominees in its proxy materials. If the short slate rule is eliminated and mandatory universal proxy is adopted, shareholders would be able to select their preferred combination of nominees, including the registrant nominees, if any, when voting for directors using the dissident's proxy card.

7. If we change the consent required of a bona fide nominee, as proposed, is there any reason the short slate rule, or a modified version of the rule, should be retained? If so, what circumstances would warrant the continued use of the short slate rule and should it be modified to enhance its utility?

We believe that a mandatory universal ballot would serve as a better tool for investors, allowing for the elimination of the short-slate rule. The current short-slate rule does not currently allow shareowners to pick and choose among the combination of issuer and dissident nominees that they prefer. The short-slate only allows shareowners to choose the nominees that a dissident chooses from the issuer nominated directors and therefore does not allow for the level of chose of a universal proxy option. A dissident can still recommend the issuer sponsored directors they prefer, but should not automatically chose for whom shareowners can vote.

3. Solicitation Without a Competing Slate

While the impetus for proposing amendments to Rule 14a-4(d), is to address situations in which there are competing slates for the board of directors, the SEC notes that the proposed amendments would affect the conduct of proxy contests even when a proponent is not

nominating its own candidates for the board of directors. A proponent might, for example, seek authority to vote "against" one or more (but fewer than all) of the registrant nominees. In that situation, the bona fide nominee rule currently would prevent the proponent from naming, and soliciting votes "for," any of the other registrant nominees because they have not consented to being named in the proponent's proxy statement. Furthermore, the short slate rule is not available for a proponent's solicitation of authority to vote "against" one or more of the registrant nominees.

12. The proposed amendments to the bona fide nominee definition would permit proponents to include the names of some or all of the registrant's nominees on its proxy card even when the proponent is not nominating its own candidates. Should this be permitted? Why or why not? Are there additional or different changes that we should make to our rules that apply to a situation in which the proponent is not nominating its own candidates? For example, should we instead require those proponents to include the names of all registrant nominees? Why or why not?

We see no reason why this should not be permitted, as there are some circumstances (such as those cited above where a dissident may instead wish to vote "against" certain nominees) where a universal proxy may prove a useful tool for shareowners even if a dissident is not nominating anyone to the board.

B. Use of Universal Proxies

To update the proxy system to better facilitate shareholders' ability to vote for their choice of nominees, the SEC is also proposing amendments to the federal proxy rules that would require each soliciting party in a contested election to distribute a universal proxy that includes the names of all candidates for election to the board of directors. The dissident in a contested election would be required to provide notice to the registrant of its intent to solicit proxies in support of director nominees, other than the registrant's nominees, and the names of those nominees, no later than 60 calendar days prior to the anniversary of the previous year's annual meeting date. Similarly, the registrant in a contested election would be required to notify the dissident of the names of the registrant's nominees no later than 50 calendar days prior to the anniversary of the previous year's annual meeting date.

1. Mandatory Use of Universal Proxies in Non-Exempt Solicitations in Contested Elections

The SEC is proposing new Rule 14a-19(e) to require that proxy cards used in a nonexempt solicitation in connection with a contested election include the names of all duly nominated candidates for election to the board. Rule 14a-4(b)(2) currently requires that a form of proxy providing for the election of directors shall set forth the names of the persons nominated for election as directors, including certain shareholder nominees. Proposed Rule 14a-19(e), in conjunction with the proposed change to the consent required of a bona fide nominee discussed above, would require proxy cards used in contested elections to include the names of all nominees of the registrant, certain shareholders, and any dissident that has complied with

proposed Rule 14a-19. The SEC believes this change would better enable shareholders to vote for their preferred combination of nominees in a contested election of directors and would allow the proxy process to more closely replicate the voting choices available at a shareholder meeting.

a. Mandatory Use of Universal Proxies

The SEC considered whether to propose the mandatory use of universal proxies or to allow each party to decide whether to use a universal proxy. The Rulemaking Petition recommended that the Commission require all duly nominated candidates be named in the universal proxy, noting that such requirement would ensure shareholders' ability to use either party's proxy card to vote for the combination of board candidates they prefer. The Rulemaking Petition also contended that simply repealing the consent required of a bona fide nominee might encourage parties to circulate semi-universal proxy cards featuring more, but not all, candidates.

14. Should we mandate the use of universal proxies in contested elections, as proposed? Does such a requirement more effectively replicate in-person attendance at a shareholder meeting than the current proxy system? Are there additional changes we should make to our proxy rules to facilitate shareholders' ability to vote by proxy in the same manner they could vote in person at a meeting?

Yes, we believe a mandatory universal ballot allows shareowners the most choices when choosing from director candidates in contested elections.

17. Would a mandatory universal proxy system result in investor confusion, such as confusion regarding which party a nominee supports? Would the proposed requirement to clearly distinguish between registrant and dissident nominees on the proxy card avoid or mitigate that confusion? Are there additional rule changes that we should make in this regard?

We believe that the steps the SEC has taken in proposing the rule, such as distinguishing from issuer and dissident nominees, standardizing the presentation of nominees and allowing each party to state clearly state which nominees they support should ameliorate some of this confusion.

b. Use in Contested Elections

The SEC is proposing to apply the requirement to use universal proxies to all nonexempt solicitations in connection with contested elections where a person or group of persons is soliciting proxies in support of director nominees other than the registrant's nominees. The SEC is proposing this approach because of its rationale for requiring the use of universal proxies – that the proxy voting process should mirror as much as possible the vote that a shareholder could make by attending the meeting and voting in person – applies equally to all types of contested elections. The SEC believes that rules should permit shareholders to select the combination of nominees that best aligns with their interests in any contested election, whether

a dissident is soliciting proxies in support of a number of nominees that would constitute a minority or a majority of the board of directors.

25. Should we require the use of universal proxies in all contested elections, as proposed? Should we instead limit the use of universal proxies to contested elections in which a dissident is soliciting proxies in support of a slate that, if elected, would constitute a minority of the board of directors? If so, why should we differentiate between such contests? Should we instead limit the use of universal proxies in a different way?

We believe that universal proxies should be used in all contested elections for the sake of consistency, and to give shareowners the fullest option of choices when electing directors.

2. Dissident's Notice of Intent to Solicit Proxies in Support of Nominees other than the Registrant's Nominees

The SEC is proposing to require the dissident to provide notice to the registrant of its intent to solicit proxies in support of director nominees other than the registrant's nominees. The SEC believes that establishing a notice requirement is necessary to provide a definitive date by which the parties in a contested election will know that use of universal proxies has been triggered. For that reason, the SEC is proposing a new notice requirement that would apply to any dissident who intends to conduct a non-exempt solicitation and solicit proxies in support of director nominees other than the registrant's nominees using its own proxy card.

29. Should we require a dissident to provide notice of its intent to solicit in advance of a shareholder meeting, as proposed? Would this requirement significantly hinder a dissident's ability to initiate a proxy contest? Why or why not? Does proposed Rule 14a-19 create logistical or timing issues not addressed in this release?

We believe that it is reasonable for the SEC to require the dissident to provide notice to the registrant of its intent to solicit proxies in support of director nominees other than the registrant's nominees. We agree that establishing a notice requirement will be helpful in providing a definitive date by which the parties in a contested election will know that use of universal proxies has been triggered.

31. Does the proposed requirement to identify a dissident's nominees 60 days in advance of a meeting sufficiently accommodate the interests of both dissidents and registrants? Should the notice be required more or fewer days in advance? Alternatively, would some other triggering event for filing the notice, such as within five days of the registrant filing its preliminary proxy statement, better provide appropriate notice? Would some other period of time be more appropriate? If a registrant did not hold an annual meeting during the previous year, or if the date of the meeting has changed by more than 30 calendar days from the previous year, should

we require a dissident to provide notice by the later of 60 calendar days prior to the date of the annual meeting or the tenth calendar day following the day on which public announcement of the date of such meeting is first made by the registrant, as proposed? Should we instead require registrants to file a Form 8-K within four business days of determining the anticipated meeting date to disclose the date by which a dissident must submit the required notice and require that such date be a reasonable time or a specified number of days before the registrant first files proxy materials with the Commission? Is there a more appropriate notice deadline we should use in situations in which a registrant did not hold an annual meeting during the previous year or the date of the meeting has changed by more than 30 calendar days from the previous year?

Sixty days seems to be a reasonable amount of time for both dissidents and issuers to produce a universal proxy for the annual meeting. In cases where there was no annual meeting the previous year in which to set the data, or if the annual meeting has been moved more than 30 days from the date the previous year, it makes sense to ask the dissident to provide the dissident nominees 60 days before the planned meeting. For the sake of simplification, it may make sense to simply require companies to announce their annual meeting dates well in advance (more than 60 days) and require dissidents to work with that date (for the current year's meeting) when submitting any dissident nominees.

3. Registrant's Notice of Its Nominees

The SEC is proposing to require the registrant to notify the dissident of the names of its nominees unless the names have already been provided in a preliminary or definitive proxy statement filed by the registrant. Proposed Rule 14a-19(d) would require a registrant to provide the dissident with the names of the nominees for whom the registrant intends to solicit proxies no later than 50 calendar days prior to the anniversary of the previous year's annual meeting date. If the registrant did not hold an annual meeting during the previous year, or if the date of the meeting has changed by more than 30 calendar days from the previous year, proposed Rule 14a-19(d) would require that the registrant provide notice no later than 50 calendar days prior to the date of the meeting. Proposed Rule 14a-19 would not require a registrant to file the notice with the Commission.

36. Should we require a registrant to notify the dissident of the names of registrant nominees, as proposed? Would the proposed notice requirement for registrants affect the process by which a board of directors nominates candidates? If so, how? Is the proposed notice requirement for registrants inconsistent with any state or foreign law provision?

Yes, the registrant should be required to notify the dissident of the names of the registrant nominees, as this will allow the dissident the information they need to produce a universal ballot.

37. Should any other information besides the names of the registrant's nominees be required?

No other information is necessary, as the names of the nominees is likely all that will appear on the final ballot. Issuers will also be providing detailed biographical and other information about their nominees in their own definitive proxy statements.

38. Is 50 calendar days prior to the anniversary of the previous year's annual meeting date an appropriate deadline for the notice of the registrant's director nominees? Should we require a longer or shorter period of time? Why or why not? Should the deadline for registrants be tied to the registrant's receipt of the dissident's notice? For example, should we instead adopt a deadline for registrants that is the later of 60 calendar days prior to the meeting or 10 calendar days following registrant's receipt of dissident's notice pursuant to proposed Rule 14a-19? Why or why not?

We feel that the deadline for a registrant's nominees should be the same required of dissidents. The current proposed rule suggests that this time would be 60 days, which seems reasonable for both parties.

4. Minimum Solicitation Requirement for Dissidents

Current rules do not require a registrant or a dissident to solicit, or furnish a proxy statement to, a certain number or percentage of shareholders. Instead, SEC rules only require the parties to furnish a proxy statement to each person solicited. Proposed Rule 14a-19 would require dissidents in a contested election subject to Rule 14a-19 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. The SEC estimates that in approximately 97 percent of recent proxy contests the dissident solicited a number of shareholders greater than would be required under the proposed minimum solicitation requirement.

Without a minimum solicitation requirement, mandatory universal proxy could enable dissidents to capitalize on the registrant's solicitation efforts and relieve dissidents of the time and expense necessary to solicit sufficient support for its nominees to win a seat on the board of directors. The minimum solicitation requirement would preclude a dissident from triggering mandatory universal proxy for both parties unless the dissident intends to conduct an independent solicitation by distributing its own proxy statement and form of proxy. The SEC is mindful of concerns that have been raised about the possibility that universal proxies would allow dissidents to have their nominees included on registrants' proxy cards, which would likely be disseminated to all shareholders of the company, without expending any of their own resources to get the names of their nominees in front of all shareholders of the company. The SEC believes that the proposed minimum solicitation requirement would help address these concerns. The SEC also believes that the nature of contested elections today, particularly when share ownership is widely dispersed, is such that dissidents would still need to engage in meaningful solicitation efforts in order to actually win a seat on the board of directors.

41. Should we require a dissident 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, as proposed? Should we instead require a dissident to solicit the holders of shares representing at least a majority of the outstanding voting power? Why or why not? Should we instead require a dissident to solicit

all shareholders? Why or why not? Should we consider alternative solicitation or other requirements for dissidents? If so, what other requirements should we consider? For example, should dissidents be required to make all proxy materials publicly accessible, free of charge, at an Internet web site other than the Commission's EDGAR system?

It makes sense to set a minimum solicitation threshold that dissident's must meet so that dissident's cannot simply free-ride on the registrant's solicitation efforts thereby relieving dissidents of the time and expense necessary to solicit sufficient support for its nominees to win a seat on the board of directors.

44. Would dissidents have access to sufficient information to determine how to meet the minimum solicitation threshold? Why or why not? Could proxy service providers provide sufficient information for dissidents to determine how to meet the minimum threshold? Why or why not?

This is a question we have as well? Are there cases where it would be impossible or cost prohibitive to meet this threshold. For example, if a small company had mostly retail shareholders, could a dissident get this information to a sufficient number of these shareowners for a reasonable cost? We expect the SEC to get plenty of input from other investors and companies on this matter, and hope that the final rule takes into account any such challenges.

5. Dissemination of Proxy Materials

Under current proxy rules, the soliciting parties in a contested election are required to provide information about their nominees in a proxy statement on Schedule 14A. For example, Item 7 of Schedule 14A requires detailed disclosure about director nominees, including their names, ages, business experience for the last five years, and involvement during the past 10 years in certain types of judicial and administrative proceedings. Rule 14a-5(c) permits one soliciting party to refer to information in the other party's proxy statement to satisfy its own disclosure obligations under Schedule 14A, including those set forth in Item 7. With universal proxies, shareholders would have the ability to vote for their preferred nominees among all of the director candidates in a contested election upon receiving one party's proxy materials. In these circumstances, the SEC believes it is important that shareholders have the ability to access disclosure about all nominees for whom they are asked to make a voting decision at that time.

a. Dissident's Requirement to File Definitive Proxy Statement 25 Calendar Days Prior to Meeting

Proposed Rule 14a-19 would require a dissident in a contested election to file its definitive proxy statement with the Commission by the later of 25 calendar days prior to the meeting date or five calendar days after the registrant files its definitive proxy statement, regardless of the proxy delivery method. As proposed, the five calendar day deadline would be triggered if the registrant files its definitive proxy statement fewer than 30 calendar days prior to the meeting date, in

which case the dissident would be required to file its definitive proxy statement no later than five calendar days after the registrant files its definitive proxy statement.

46. Should we require dissidents to file their definitive proxy statement by the later of the 25th calendar day before the meeting or five calendar days after the registrant files its definitive proxy statement where the registrant files its definitive proxy statement fewer than 30 calendar days prior to the meeting date, as proposed? Why or why not? Does the proposed deadline provide sufficient time before the meeting for shareholders who are not solicited by the dissident to access information about the dissident's nominees in the dissident's definitive proxy statement through the Commission's website?

These filing requirements seem reasonable and should provide shareowners sufficient time before the meeting to access information about both issuer and dissident nominees.

b. Access to Information about all Nominees

Under current rules, a registrant's or dissident's proxy statement on Schedule 14A is generally not required to include information about the other party's nominees and may be disseminated before the other party disseminates its proxy statement. As a result, shareholders presented with a universal proxy card would be asked to vote for nominees without necessarily having access to disclosure about those nominees. Mindful of the potential lack of information upon which shareholders may make a voting decision in such circumstances, we have considered how and from whom shareholders should receive information about the other party's nominees when faced with a voting decision in a contested election subject to mandatory universal proxy.

The SEC believes that each party should provide the information required by Schedule 14A for its nominees in its proxy materials as is done today. The SEC also believes that Rule 14a-5(c) should continue to operate to permit parties to refer to the other party's proxy statement to satisfy its disclosure obligations about the other party's nominees. The SEC is proposing changes to the proxy rules to require dissidents in a contested election to file a definitive proxy statement by the later of 25 calendar days prior to the meeting date or five calendar days after the registrant files its definitive proxy statement and to solicit at least a majority of the voting power of shares entitled to vote on the election of directors. Since the dissident would not be required to solicit all shareholders, it is possible that some shareholders would not receive the dissident's proxy materials containing information about the dissident's nominees. As a result, the SEC is proposing a new Item 7(h) of Schedule 14A to require that each party in a contested election refer shareholders to the other party's proxy statement for information about the other party's nominees and explain that shareholders can access the other party's proxy statement for free on the Commission's website. Because this required disclosure would be included in the registrant's proxy materials, which all shareholders would likely receive, even those shareholders that do not receive the dissident's proxy materials would have access to information about the dissident's nominees. The SEC is also proposing to revise Rule 14a- 5(c) to permit the parties to refer to information that would be furnished in a filing of the other party to satisfy their disclosure obligations. Taken together, these proposed changes are intended to enable shareholders to access information with respect to all nominees when they receive a universal proxy card.

48. Should we adopt proposed Item 7(h) of Regulation 14A to require that each soliciting person in a contested election refer shareholders to the other party's proxy statement for information about the other party's nominees and explain that shareholders can access the other party's proxy statement for free on the Commission's website, as proposed? Is this statement sufficient to inform shareholders how to access information about the parties' nominees such that shareholders can make an informed voting decision when they have only received a proxy statement and universal proxy card from one party? Should we require any additional information, such as instructions as to how to access proxy statements on the Commission's website or a hyperlink to that website?

It makes sense to allow each party to refer shareowners to the other party's proxy statement for information about the other party's nominees. This information will be housed on the Commission's website allowing easy access to most shareowners and reduce costs for both issuers and dissidents.

49. Should we amend Rule 14a-5(c) to permit soliciting parties to refer to information that would be furnished in a filing of another soliciting party in order to satisfy their disclosure obligations, as proposed? Should we limit the ability to refer to a future filing of another soliciting person to solicitations in connection with contested elections?

This proposal seems reasonable to allow both parties to refer to information in another parties soliciting documents in order to fulfill filing requirements. We believe this should be allowed for future filings only when the future filing will follow soon after another parties' filing, and not be allowed for filings expected in the distant future.

6. Form of the Universal Proxy

The SEC is proposing the use of separate universal proxy cards in which each party in a contested election distributes its own proxy card that includes the names of both parties' nominees and designates its own representatives as proxy holders to exercise the vote pursuant to the proxy. The use of separate proxy cards would not represent a change from how proxies are solicited in contested elections today. The SEC is proposing to retain this aspect of the proxy rules and process because we believe parties prefer to design their own proxy cards (subject to the proposed presentation and formatting requirements in proposed Rule 14a-19) in a manner they deem appropriate. Additionally, separate proxy cards also give each party control over the dissemination of its proxy card and insight into the preliminary results of the solicitation before the meeting. 148 Finally, permitting each party to control its own proxies avoids empowering only one party to exercise discretionary authority on those matters for which a choice is not specified and on any of the matters specified in Rule 14a-4(c).149 The proposed presentation and formatting requirements would require that universal proxy cards provide clear instructions to permit shareholders to effectively vote their shares for the director nominees they

prefer through the proxy process and to help ensure that proxies are exercised in accordance with the choices specified by the shareholders on the proxy cards.

Rule 14a-4 governs the form of the proxy card and requires, among other things, that the proxy card:

• indicate in bold-face type whether or not it is solicited on behalf of the registrant's board of directors or, if solicited on behalf of some other person, the identity of such person;

• provide a basis for shareholders to instruct separately and with specificity how the proxy holders must vote on the election of directors and on non-election proposals; and

• if providing for the election of directors, set forth the names of the nominees and permit shareholders to withhold voting authority from each nominee.

To help ensure that universal proxies clearly and fairly present information so that shareholders can effectively exercise their voting rights, proposed Rule 14a-19(e) would include the following presentation and formatting requirements for all universal proxy cards used in contested elections:

- The proxy card must clearly distinguish between registrant nominees, dissident nominees, and any proxy access nominees;
- Within each group of nominees, the nominees must be listed in alphabetical order by last name on the proxy card;
- The same font type, style and size must be used to present all nominees on the proxy card;
- The proxy card must prominently disclose the maximum number of nominees for which authority to vote can be granted; and
- The proxy card must prominently disclose the treatment and effect of a proxy executed in a manner that grants authority to vote for more nominees than the number of directors being elected, in a manner that grants authority to vote for fewer nominees than the number of directors being elected, or in a manner that does not grant authority to vote with respect to any nominees.

51. We are proposing presentation and formatting requirements for all universal proxy cards used in contested elections, including requiring that the card clearly distinguish between registrant, dissident and proxy access nominees, that such nominees be listed alphabetically by last name, and that the same font type, style and size be used. Are these requirements for the proxy card appropriate or should we permit greater flexibility for parties to tailor the format of the card as they choose? Should we impose additional presentation and formatting requirements, such as requiring that nominees be grouped in columns to more clearly distinguish between groups of nominees? Is it sufficient to simply require that the proxy card clearly distinguish between nominees without specifying additional requirements? Should we permit, within the proposed categories of nominees, further sub-categorization of nominees?

The SEC's proposed formatting requirements appear reasonable and appropriate. It may make sense to separate the issuer nominees and dissident nominees into columns to avoid some

confusion as to which nominee has been proposed by which party. We leave the details as to the final format of the proxy card to the SEC to decide following this comment period. However, we do encourage the commission to mandate a consistent format for all proxy cards, meaning all proxy cards should look the same (font size, font type, order of nominees, etc.) so that investors become familiar with a consistent template.

53. Should we require that the proxy card prominently disclose the maximum number of nominees that can be voted upon and the effect of over-voting or under-voting, as proposed? Is this disclosure sufficient for shareholders to understand the implications? How else can we address these issues, including mitigating any risk of over-voting with universal proxies?

Yes, we believe this disclosure is important to help investors understand the implications of their vote.

54. Should the universal proxy card provide the ability for a shareholder to vote for all of a soliciting person's nominees as a group only where both parties have proposed a full slate of nominees, as proposed? Should group voting be permitted where one party has proposed a partial slate? Should we additionally permit group voting where a shareholder director nominee is included in the registrant's proxy material pursuant to proxy access provisions in the registrant's governing documents or applicable state or foreign law? Would group voting in such circumstances create an unfair advantage for the registrant or other party providing a full slate?

We believe group voting should be allowed regardless of whether a dissident has proposed a full slate or a partial slate.

C. Additional Revisions

1. Director Election Voting Standards Disclosure and Voting Options

The SEC is proposing additional amendments to the form of proxy and disclosure requirements with respect to voting options and voting standards that would apply to all director elections. First, the SEC is proposing to amend Rule 14a-4(b) to: (1) mandate the inclusion of an "against" voting option in lieu of a "withhold authority to vote" option on the form of proxy for the election of directors where there is a legal effect to such a vote; and (2) provide shareholders that neither support nor oppose a director nominee an opportunity to "abstain" (rather than "withhold authority to vote") in a director election governed by a majority voting standard. Second, we are proposing amendments to Item 21(b) of Schedule 14A to expressly require the disclosure of the effect of a "withhold" vote.

The voting standard for director elections is established under state law and a registrant's governing documents. Director nominees are generally elected under either a plurality voting standard or a majority voting standard. Under the plurality voting standard, the director nominee receiving the highest number of votes for a given seat is elected. As a result, a director nominee in an uncontested election only needs a single vote in favor of his or her election to be elected. In recent years, however, many public companies have moved toward two other voting

standards in director elections – "plurality plus" and majority voting. Under a "plurality plus" voting standard, an incumbent director agrees in advance to resign if he or she receives more votes withheld than votes in favor of his or her re-election. The remaining directors then determine, in their discretion, whether to accept or reject an incumbent director's resignation. Under a majority voting standard, director nominees are elected only if, depending on the specific version of the standard used by the registrant, they receive affirmative votes from: (i) a majority of the votes cast; or (ii) a majority of shares present and entitled to vote.

Recently, the Commission became aware of concerns that some company proxy statements had ambiguities and inaccuracies in their disclosures about voting standards in director elections. In light of these concerns, staff in the Division of Corporation Finance and the Division of Economic and Risk Analysis assessed the proxy statement voting standard disclosure provided by a broad set of companies. The staff found some ambiguities or inaccuracies, including:

• the failure to include an "against" option on the form of proxy when a majority voting standard is used;

• the mistaken use of the "against" option on a form of proxy when there was a plurality voting standard, where the only appropriate alternative for voting was "withhold"; and

• incorrect statements that "withhold" votes are counted in determining election outcomes.

61. We are proposing to amend Rule 14a-4(b) to require the form of proxy for a director election governed by a majority voting standard to include a means for shareholders to vote "against" each nominee and a means for shareholders to "abstain" from voting in lieu of providing a means to "withhold authority to vote." Should we eliminate the "withhold" voting option under a majority voting standard for director elections, as proposed? Should we eliminate the "withhold" voting option for contested elections subject to proposed Rule 14a-19 (i.e., where universal proxies are required)? Why or why not? If we do not adopt a mandatory system for universal proxies, as proposed, should we prohibit the "withhold" voting option for contested elections? Why or why not?

We feel that it would be beneficial to allow shareowners to lodge an "abstain" or "against" vote in voting for directors. We feel this will allow shareowners to send a more specific message with their vote.

Concluding Remarks

We appreciate the opportunity to comment on this important proposed rule by the SEC. Should you have any questions about our positions, please do not hesitate to contact James Allen, CFA at [redacted] or [redacted] or Matt Orsagh at [redacted] or 434.951.4829.

Yours faithfully,

/s/ James Allen, CFA
Head, Capital Markets Policy
CFA Institute
[redacted]

/s/ Matt Orsagh, CFA
Director, Capital Markets Policy
CFA Institute
[redacted]