

CONSULTATION RESPONSE

**SECURITIES AND EXCHANGE COMMISSION: REOPENING OF COMMENT
PERIOD ON UNIVERSAL PROXY
[RELEASE NO. 34-91603; IC-34246; FILE NO. S7-24-16]**

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INTRODUCTION

The Principles for Responsible Investment (PRI) is the world's leading initiative on responsible investment. The PRI is a not-for-profit company with over 4,000 signatories (pension funds, insurers, investment managers and service providers) to the PRI's six principles with approximately US \$103 trillion in assets under management.

The PRI supports its international network of signatories in implementing the Principles. As long-term investors acting in the best interests of their beneficiaries and clients, our signatories work to understand the contribution that environmental, social and governance (ESG) factors make to investment performance, the role that investment plays in broader financial markets and the impact that those investments have on the environment and society as a whole.

The PRI works to achieve this sustainable global financial system by encouraging adoption of the Principles and collaboration on their implementation; by fostering good governance, integrity and accountability; and by addressing obstacles to a sustainable financial system that lie within market practices, structures and regulation.

The PRI welcomes the opportunity to respond to the Commission's proposal to require the use of universal proxy cards in all non-exempt solicitations in connection with contested elections of directors.

ABOUT THIS CONSULTATION

This consultation responds to the U.S. Securities and Exchange Commission's reopening of the public comment period on its proposal to amend the proxy voting process for elections of public company board directors to require that a universal, or uniform, proxy card be provided to shareholders in each election. Under current rules, there is no mandate that solicited voting cards for proxy voters include the names of all qualified candidates for director positions. The original proposed rule was released in 2016, followed by a public comment period. However, no Commission action followed the close of the original public comment period. The PRI welcomes the reopening of this comment period, and supports Commission action to adopt universal proxy cards, simplifying the proxy process and increasing shareholders' ability to exercise their voting rights.

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SUMMARY OF THE PRI POSITION

The PRI welcomes the Commission revisiting the consideration of universal proxy cards and supports further action to require universal proxy cards in all contested elections of directors. The establishment of rules for universal proxy cards will allow for more equal participation of shareholders voting by proxy by providing them a full slate of qualified nominees, rather than a limited selection. The PRI further encourages the Commission to enhance efforts to ensure shareholder equality and access throughout the proxy process.

The first two tenants of the Commission's three-part mission are to protect investors and maintain fair, orderly and efficient markets, respectively. The current proxy voting process does not protect all investors' ability to participate in contested elections of directors equally. Director nominations and elections represent some of the most fundamental ownership rights for shareholders – namely the right to appoint and remove members of a company board to represent their interests in promoting long-term value creation. Currently, the complex system of voting on director nominations creates one set of elections for shareholders voting in person on a full slate of nominees, and a different set of elections for shareholders voting by proxy on partial slates of nominees, thereby limiting access to information and full participation. The PRI encourages the Commission to amend the proxy voting process to require access for every shareholder to the same, full slate of director nominees on which to cast votes in a transparent and easily accessible proxy process.

CONSULTATION RESPONSE

BACKGROUND

Under the current proxy voting process for contested elections of positions for boards of directors, shareholders voting by proxy often do not have access to the same slate of nominees as those shareholders voting in person. While shareholders voting in person have access to a full slate of all nominees for board positions, shareholders voting by proxy are limited to the selection of candidates provided by the party soliciting the shareholder's proxy. This leads to shareholders being provided with proxy voting cards that purposefully do not list all nominees for board positions. Without any rules to prevent limited voting cards, those soliciting proxy votes are able to craft and widely distribute voting cards that purposefully do not list specific qualified nominees that shareholders should be provided the opportunity to cast votes to elect.¹

¹ Securities and Exchange Commission, *Release No. 34-79164; IC-32339; File No. S7-24-16*, available at <https://www.sec.gov/rules/proposed/2016/34-79164.pdf>.

INVESTOR PERSPECTIVE

A growing body of empirical evidence shows that effective stewardship on ESG principles increases long-term value for shareholders and success for management.² As such, the PRI's asset owner and investment manager signatories pursue stewardship practices as part of their fiduciary duty. This includes encouraging high standards of ESG performance in the companies in which they invest, including voting for director candidates that will support company actions to consider and address ESG factors that can have an impact on performance. For an investor, an ineffective nominations process can increase risk, as the inability to hold board members or whole boards accountable for actions - as well as inaction - can increase risks of unmitigated climate exposure and miss opportunities associated with a diverse, equitable workforce, for example.

However, the voting process for contested elections of directors is overly complex and unequal, and the lack of universal proxy cards is a barrier to investors engaging in active ownership and fully integrating the six principles for responsible investment as they look to create long-term shareholder value.

CURRENT LIMITS OF THE PROXY PROCESS

The first two tenants of the Commission's three-part mission are to protect investors and maintain fair, orderly and efficient markets, respectively. The current system of proxy voting in contested elections of directors fails to fully and equally protect investors by allowing for two, or more, sets of election slates, one for those voting in person and different, incomplete slates for those voting by proxy. This system creates two different competitions. The first being the in-person vote and the second being the effort to deliver discrete slates to as many shareholders as possible. Rather than facilitate shareholder participation in a proxy election process, this system denies proxy voters the ability to make fully informed voting decisions in the election of directors and fully exercise their rights as shareholders.

The existing proxy voting system does not maintain a fair, orderly and efficient market as the divergent proxy voting process unnecessarily creates two separate systems for shareholders based on their voting location. While a number of Commission actions over the years have sought to remedy specific issues within this system, none have resolved the underlying issue of different election rights and abilities for different shareholders. However, the COVID-19 global pandemic demonstrated the ability of technology to be a proxy for distance.³ The technology exists to fully and equally incorporate shareholders voting by proxy in the regular proceedings of contested director elections and the Commission has a responsibility to utilize this technology to modernize and streamline the proxy voting process in order to establish fair, accessible elections.

In conclusion, the PRI supports the Commission's efforts to gather public input on the creation of universal proxy cards and encourages the Commission to move forward with the establishment of an efficient, equal proxy system that supports shareholders in fully exercising their rights. The current proxy process for contested director elections is unnecessarily complex and divergent in an age where technology allows for simplicity and near-universal instant access to information.

² Principles for Responsible Investment, *How ESG Engagement Creates Value for Investors and Companies* (2018), available at, <https://www.unpri.org/download?ac=4637>.

³ Harvard Law School Forum on Corporate Governance, *Another Year of Virtual Shareholder Meetings* (January 2021), available at, <https://corpgov.law.harvard.edu/2021/01/07/another-year-of-virtual-shareholder-meetings/>, and Deloitte, *Post COVID-19: The benefits of virtual shareholder general meetings*, (June 2020), available at, <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-virtual-shareholder-meetings-in-the-age-of-COVID-19.pdf>.

The PRI has experience of public policy on sustainable finance policies and responsible investment across multiple markets and stands ready to further support the work of the Securities and Exchange Commission to improve shareholder access and engagement in the proxy voting process in the United States.

Any question or comments can be sent to [REDACTED]