



January 3, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File Number S7-24-16: Universal Proxy

Dear Mr. Fields, Chair White, and Commissioners:

Thank you for the opportunity to comment on [the newly proposed rule on the universal proxy](#).

The National Association of Corporate Directors (NACD) is the nation's oldest and largest organization for directors and boards. We are now 17,000 members strong. We convene, educate, and inform directors on a wide range of governance issues, including director nomination and election, which is the focus of the newly proposed rule. This comment is offered from the perspective of corporate directors whose nominations, elections, and service may be affected by the proposed rule. In particular, we are mindful of the impact such a change would have on the work of the nominating and governance committee (hereinafter referred to as the "nominating committee").

In the proposed rule, the U.S. Securities and Exchange Commission (SEC) seeks to simplify the proxy voting process in contested elections by having one ballot rather than two. With a universal proxy, board-nominated and dissident-nominated candidates would be on a single ballot, rather than on separate slates.¹ The proposed rule also would expand disclosure requirements for proxy statements to specify voting options and standards for director elections.

The release proposing this new rule asks a series of questions aimed at revising the short slate rule to enable a new mandate for universal proxies. Rather than answering these very specific queries, NACD would like to express an ideal to be achieved. We will leave the mechanics necessary to achieve that ideal up to the SEC and expert commenters.

Overall, NACD opposes universal ballots because the "mix and match" voting approach that they empower could result in a final group of directors that might not be optimal for the specific company they would be serving. There is a reason for the traditional slate approach: Slates are created by people who have given thought to and have studied an optimal board. This is certainly the case for most of the nominating committees NACD has seen in action. It is also the case for some of the more thoughtful shareholders who have proposed alternative slates. However, it is not the case, and cannot, logically, be the case for the thousands of shareholders—mostly retail investors—who would be mixing and matching names on a universal proxy and might end up voting for an ultimately random assortment of nominees based on individual popularity (and in some cases, politics) rather than voting with the creation of an effective group in mind.

A board must be elected to function as a group—a group that has a carefully selected, diverse, and balanced mix of professional and personal experience, education, and skills, including communication and problem-solving skills. The election process should assemble a board of directors whose skill sets are complementary and who are capable of working together to advance corporate strategy. When independent nominating committees consider candidates for open positions, they weigh candidates' skills against the needs of their current board and the shifting strategic needs of the company. They must clearly articulate the rationale for their slate of directors, in particular the fitness of their candidates for open positions. Directors serving on nominating committees should also make it clear that they have made a proactive effort to learn about and consider the qualifications of candidates put forward by stockholders and other corporate stakeholders.

In the ideal situation, an election would not be contested in the first place because boards and shareholders would communicate effectively. As stated in NACD’s *Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies*, developed in conjunction with business leaders and institutional shareholders, “Governance structures and practices should be designed to encourage meaningful shareholder involvement in the selection of directors.”² Furthermore, our recent *Report of the Blue Ribbon Commission on Building the Strategic-Asset Board* urges boards to “solicit input from shareholders” on their choice for nominees.³ NACD actively encourages such shareholder participation on director nomination. Indeed, contested elections will likely become less common as boards continue to improve their work in creating optimal boards and in communicating their methods for achieving them. Companies today are making more extensive voluntary disclosures about director skills and qualifications, board diversity, board succession planning, board evaluations, and audit committee financial experts.⁴

The key to excellent board composition begins with a valid slate—the best-case scenario—put forth by an independent nominating committee that has considered shareholder nominees thoughtfully. In ideal circumstances, there will be no dissident slates. But if they do arise—another possible scenario—may the best slate win. The third scenario of a mix and match of board-nominated and dissident-nominated candidates in a universal proxy is *not* the solution. Indeed, the potential for dissident slates is a good way to hold boards and nominating committees accountable for their choices.

We hope that these observations and recommendations will be helpful as you consider making needed changes to the proxy voting process.

Sincerely,



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Chief Executive Officer
NACD



Peter R. Gleason
President
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Dr. Karen Horn
Chair
NACD

¹ Specifically, the SEC wants to amend federal proxy rules to require the use of universal proxies for contested elections in public companies, with certain exceptions—namely for exempt solicitations, for registered investment companies, and for business development companies. Although such an option has always been available to shareholders voting in person at the annual meeting, it has not been available by proxy, as proposed here.

² NACD, *Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies* (Washington, DC: NACD, 2011), p. 2.

³ NACD, *Report of the Blue Ribbon Commission on Building the Strategic-Asset Board*, (Washington, DC: NACD, 2016).

Under a [disclosure rule](#) in place since the Sarbanes–Oxley era, boards are already required to disclose sources of candidates.

⁴ NACD, “Trends in Disclosures Relating to Director Skills and Corporate Governance Practices,” Appendix L (Source: Sidley Austin LLP), in *Report of the Blue Ribbon Commission on Building the Strategic-Asset Board* (Washington, DC: NACD, 2016), pp. 61–65.