

January 9, 2017

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

Re: File No. S7-24-16, Release No. 34-79164, IC-32339 Proposed Rules for
Universal Proxy Requirement

Jamie Dimon
JPMorgan Chase & Co.
Chairman

David M. Cote
Honeywell
Vice Chair

Marillyn A. Hewson
Lockheed Martin
Vice Chair

Andrew N. Liveris
The Dow Chemical Company
Vice Chair

John Engler
President

Jessica Boulanger
Senior Vice President

Marian Hopkins
Senior Vice President

William C. Miller, Jr.
Senior Vice President

LeAnne Redick Wilson
Senior Vice President

Maria Ghazal
General Counsel

Dear Mr. Fields:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies. With more than \$6 trillion in annual revenues and nearly 15 million employees, Business Roundtable companies comprise nearly one-quarter of total U.S. stock market capitalization.

Business Roundtable appreciates the opportunity to comment on the SEC's proposed rules relating to the use of universal proxies in contested director elections. We have several significant concerns with the proposed rules, which we discuss in our comments set forth below.

1. *The Proposed Rules May Disenfranchise Shareholders While Favoring Activist Shareholders Who May Be Driven By Self-Interest.*

We understand that a primary goal of a universal proxy requirement is to allow shareholders who vote by proxy in a contested election the same ability to “split their ticket” – that is, vote for a combination of candidates nominated by the company and the dissident shareholder – as if they were voting in person at the meeting. We believe, however, that the proposed rules will not adequately address this intended goal, and instead will likely disenfranchise shareholders and create greater “investor confusion” through information inequities and potentially misleading proxy cards that are not truly “universal.”

a. *The Minimum Solicitation Rule May Create Informational Barriers and Inequities.*

Under the proposed rules, a dissident shareholder need only solicit (and send its proxy materials to) the holders of a majority of the voting power of shares entitled to vote in director elections. In many cases, this could mean that the

dissident need not send its soliciting materials to the vast majority of the targeted company's shareholders. As a result, hundreds of thousands of shareholders, including many retail and small institutional shareholders, would receive a "universal" proxy card that lists the names of the company's and the dissident's nominees but would not receive the dissident's proxy materials, including the biographies of its nominees. Further, the proposed rules do not provide shareholders the opportunity to request a free paper copy of the dissident's solicitation materials.

These shareholders will have to navigate EDGAR to access the dissident's solicitation materials, which will create confusion for shareholders unable to piece together all the relevant information. Thus, shareholders omitted from the dissident's solicitation will be at an information disadvantage when it comes time to vote, making it difficult for those shareholders to make informed voting decisions. This may discourage shareholders from participating in the election and as a result disenfranchise many shareholders.

b. The Amendments to the Bona Fide Nominee Rule May Lead to the Creation of Confusing and Potentially Misleading Dissident Solicitation Materials.

The proposed rules permit a dissident shareholder to include the names of some or all of the company's nominees on the dissident's proxy card in certain cases, for example, where the dissident is submitting a corporate governance proposal but not nominating any director candidates. In that case, a shareholder would receive two proxy cards, each listing different voting options. The SEC states in its proposing release that this scenario would not run counter to the goal of creating a universal proxy card, because shareholders would be able to fully exercise their vote by using the company's proxy card. However, the lack of a truly "universal" proxy card in this situation may in practice simply cause confusion.

In addition, allowing a dissident shareholder to list some of the company's nominees on its proxy card alongside its governance proposal may cause shareholders to believe, incorrectly, that the listed company nominees support the dissident's proposal. It is also possible that shareholders may give authority to vote only for the nominees and proposals on the dissident's proxy card, wrongfully believing that both cards offer identical options. This means that shareholders may "under-vote," which could distort voting results in a manner adverse to the election process.

In that same vein, the proposed rules do not address the risk that an investor may "over-vote" on a single proxy card, resulting in all of that shareholder's votes being wholly invalidated. Although the proxy cards will state the maximum number of votes allowed, a universal ballot may increase the likelihood that a shareholder votes for too many nominees, which would result in all of the shareholders' votes being invalidated. (Under the current rules, a shareholder that votes on multiple proxy cards will at least have the ballot submitted last in time to count towards the overall vote.) Supporters of the proposed rules argue that properly

configured electronic voting systems will prevent over-voting on a universal proxy card, but that protection would not be available to shareholders who submit their proxies by mail.

2. The Proposed Rules Will Likely Increase the Number and Frequency of Proxy Contests and Impede the Ability of Corporate Directors to Make Long-Term, Value-Driven Decisions.

We believe that a universal proxy requirement is likely to increase the number and frequency of proxy contests, and thus the overall costs attributed to contested director elections. We note that the SEC's release does not anticipate cost savings as a result of the proposed rules, only the possibility of increased costs. Further, we believe that a universal proxy requirement is likely to encourage more proxy contests, which will continue to increase costs and administrative burdens to companies disproportionately relative to dissident shareholders.

In addition to the costs associated with administering a proxy contest, there are other less direct costs that the proposed rules may create. Every contested director election draws the time, energy and focus of company executives and boards of directors away from the ongoing operations of the companies they serve, and an unnecessary increase in contested elections may detract from the successful operation of value-creating businesses. Additionally, an increase in proxy contests may put greater pressure on companies to accede to the demands of shareholders that in some cases are at odds with long-term value creation for all shareholders, often to the detriment of shareholder value. Accordingly, we ask the SEC to consider the far-reaching costs and consequences, economic and otherwise, that a universal proxy requirement would have on public companies, shareholder value and corporate governance in the United States.

3. The Proposed Rules Represent a Significant and Fundamental Shift Away From the Traditional Method of Electing Public Company Directors and Towards a Short-Term Focused Model.

We believe that the proposed rules may encourage an increase in contested elections proposed by shareholders who may be pursuing short-term goals and special interests separate and apart from increasing long-term shareholder value. As a result, the proposed rules represent a significant and fundamental shift away from the traditional method of electing public company directors and towards a special interest-driven and shareholder-centric model and may promote "short-termism" at the expense of long-term value creation. Moreover, this shift furthers the current imbalance between activist shareholders and corporate directors and may increase the influence of largely unregulated proxy advisory firms, which often support dissident nominees in contested elections.

4. *The Proposed Rules Exacerbate the Risk of "False Equivalency" Between Incumbent Directors and Candidates Nominated By Dissident Shareholders.*

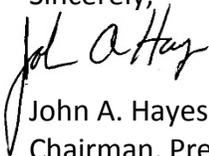
The proposed rules also create a concern regarding "false equivalency" between incumbent directors and candidates nominated by dissident shareholders – the notion that candidates nominated by a dissident shareholder are as qualified as the directors currently serving the company – experienced directors bound by fiduciary duties to the company. Simply, the possibility of false equivalency will be a cost to companies. By using a universal proxy card, it may appear that the nominees are equally qualified for board service when in fact the company's choices may reflect a careful thought process meant to fill a particular need of the board and the company as a whole, including but not limited to many companies' long-tested board succession planning processes and skills matrices. The proposed rules will allow, and indeed may encourage, shareholders to bypass this process, and the result may be that the directors elected may lack the particular competencies, expertise and skills the board needs.

Conclusion

In sum, we believe that the proposed rules will disenfranchise shareholders, increase the costs of contested elections to the detriment of shareholder value, and further shift power and influence to shareholders driven by special interests and largely unregulated proxy advisory firms. As a final matter, as you know, Congress is currently considering legislation that would prevent a universal proxy requirement. We believe it is in the best interests of shareholders and corporate governance in the United States that the SEC wait for Congressional action on the matter before implementing its final rule on the subject.

Thank you for considering our comments. We would be happy to discuss our concerns or any other matters that you believe would be helpful. Please contact Maria Ghazal, General Counsel of Business Roundtable, at [REDACTED] or [REDACTED].

Sincerely,



John A. Hayes
Chairman, President and Chief Executive Officer
Ball Corporation
Chair, Corporate Governance Committee
Business Roundtable