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

SEC Release No. 34-79164, File Number S7-24-16 Regarding Use of Universal Proxy Cards (the "Release")

Dear Mr. Fields:

We are writing in support of the proposed amendments to the Federal proxy rules published by the U.S. Securities and Exchange Commission (the "SEC") in the Release (the "Proposed Rules") providing for the use of universal proxy cards in contested director elections.

Trian Fund Management, L.P. ("Trian") is an investment management firm and a highly engaged shareowner that combines concentrated public equity ownership with operational expertise. Trian seeks to invest in high quality, but undervalued and underperforming public companies and to work collaboratively with management teams and boards of those companies to execute operational and strategic initiatives designed to drive long-term sustainable earnings growth for the benefit of all stakeholders.

Shareholders' ability to participate in director elections is fundamental to the principles of shareholder democracy on which the U.S. corporate governance system is based and is the primary mechanism by which shareholders can hold corporate directors accountable. This system of public share ownership is premised on shareholders' ability to vote for their preferred director candidates in annual elections, so we believe it is critical that the Federal proxy rules facilitate the free exercise of these rights.

As the SEC recognized in the Release, under the current Federal proxy rules, shareholders voting by proxy in contested elections are usually required to choose between voting for directors presented on the company's proxy card or directors presented on the shareholder proponent's proxy card.¹ Our own experience suggests that many shareholders would prefer to "mix and match" nominees from each proxy card, but are instead forced to cast an "all or nothing" vote that doesn't fully reflect their preferences. We have also observed that, in some cases, shareholders are confused by their voting options in a contested election and are unsure as to why they are receiving two separate proxy cards. For example, after we nominated five director candidates for election at the 2006 H.J. Heinz annual meeting, we received numerous inquiries from shareholders regarding the possibility of casting a "split-ticket" vote,² and

¹ See Universal Proxy, Release No. 34-79164 (Oct. 26, 2016) [81 FR 79122 (Nov. 10, 2016)] ("Universal Proxy Proposing Release"), at 79124.

² See Trian Fund Management, L.P., The Trian Group's Statement Regarding Short-Slate Voting Mechanics (Aug. 10, 2006) (providing guidance on voting mechanics in response to inquiries from H.J. Heinz shareholders regarding "split-ticket" voting), available at <https://www.sec.gov/Archives/edgar/data/46640/000095011706003453/0000950117-06-003453-index.htm> within proxy solicitation materials filed with the SEC.

several commentators highlighted shareholders' inability to cast such votes as a potential issue,³ with one commentator noting that "the lack of a mechanism for splitting votes is likely to continue to create problems".⁴ Similarly, after Trian nominated four director candidates for election at the 2015 DuPont annual meeting, retail and institutional shareholders expressed frustration and/or confusion with the current proxy voting system.

As the SEC noted in the Release, the only way for shareholders to mix and match candidates under the current system is to forego voting by proxy and instead attend the annual meeting in person.⁵ As a practical matter, very few shareholders choose the latter option given the associated expense and time commitment. To our knowledge, only a limited number of institutional investors attended either the 2006 H.J. Heinz annual meeting or the 2015 DuPont annual meeting. The comment letters submitted by several investors noting the impracticality of attending shareholders meetings in person is consistent with our experience.⁶ We at Trian believe that travel to annual meetings is especially impractical for smaller institutions and retail shareholders with limited resources, and that these shareholders are particularly disadvantaged by the current system. The Federal proxy rules were designed to promote the shareholder franchise by removing barriers to the free exercise of voting rights⁷— in our view, there is no reason why those rules should result in most shareholders having a more restricted set of voting options than those few shareholders who are able to travel to annual meetings in person.

We applaud the SEC for addressing these issues by proposing mandatory use of universal proxy cards in contested elections. We believe the Proposed Rules, which would allow shareholders to vote by proxy in a manner that more closely resembles how they could vote in person at an annual meeting, would eliminate the confusion and inequity associated with the current proxy voting system and its competing proxy cards and enable all shareholders to vote for their preferred set of candidates. We also believe that adoption of the Proposed Rules would ensure a less cumbersome voting process and be widely applauded by shareholders, and note that the SEC Investor Advisory Committee, which includes representatives from a broad range of shareholders, and the Council of Institutional Investors, a non-profit, non-partisan association of corporate, public and union employee benefit funds, foundations and endowments, have each advocated for the use of universal proxy cards.⁸

³ See, e.g., Richard J. Grossman & J. Russel Denton, *Never Mind Equal Access: Just Let Shareholders "Split Their Ticket"*, *The M&A Lawyer* (Jan. 2009), available at https://www.skadden.com/sites/default/files/publications/Publications1644_0.pdf, at 30-31 (citing Amy L. Goodman & John F. Olson, *A Practical Guide to SEC Proxy and Compensation Rules* (Aug. 2007), at §9-28); Jeff Cossette, *Struggle to be Heard*, *Corporate Secretary* (Oct. 2006), at 19.

⁴ See Grossman & Denton, *supra* note 3, at 31 (citing Goodman & Olson, *supra* note 3, at §9-28).

⁵ See Universal Proxy Proposing Release, *supra* note 1, at 79154.

⁶ See, e.g., Letter from Washington State Investment Board (WSIB) (Jan 5, 2017), available at <https://www.sec.gov/comments/s7-24-16/s72416-1463856-130298.pdf> (noting that "[a]s a large institutional investor, it is simply not possible for the WSIB to attend the shareholder meetings in order to be able to vote in person for our preferred candidate..."); Letter from Hermes Investment Management (Dec. 23, 2016), available at <https://www.sec.gov/comments/s7-24-16/s72416-1440887-129987.pdf> (describing itself "[a]s a representative of long-term institutional investors for which it is practically impossible to attend even a fraction of the shareholder meetings of companies within their investment portfolios...").

⁷ See 17 H.R. Rep. No. 1383, 73d Cong., 2d Sess., 14 (1934) (indicating Congress's intent that Section 14(a) should prevent frustration of the "free exercise of the voting rights of stockholders"). For an overview of the historical development of proxy voting and regulation, see Randall S. Thomas and Catherine T. Dixon, *Aranow & Einhorn on Proxy Contests for Corporate Control, Third Edition* (2001), at §1.01[A] ("Recognizing the need for federal intervention in the area of corporate voting, Congress enacted Section 14(a) of the Securities Exchange Act in 1934 to strengthen and preserve the shareholder franchise.").

⁸ See, e.g., Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Explore Universal Proxy Ballots (July 25, 2013), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/universal-proxy-recommendation-072613.pdf> ("By enabling Universal Ballots, the Commission can more directly improve this basic element of corporate democracy."); Letter from the Council of Institutional Investors (Jan. 8, 2014), available at <http://www.sec.gov/rules/petitions/2014/petn4-672.pdf> ("We firmly believe that the elimination of the bona fide nominee rule and the introduction of universal proxy cards for contested elections are integral to facilitating robust corporate democracy..."); Letter from the Council of Institutional Investors (Dec. 28, 2016), available at <https://www.sec.gov/comments/s7-24-16/s72416-1450259-130101.pdf>.

As the Release explains, it is unclear whether the use of universal proxy cards would impact the number of election contests, and it may result in either shareholder proponent or company nominees winning more seats on the Board.⁹ Although the use of universal proxy cards could increase the likelihood of a shareholder proponent nominee being elected in certain scenarios (for example, if there is a popular shareholder proponent nominee and an unpopular company nominee), its use could also disadvantage shareholder proponent nominees in other scenarios (for example, if shareholder support is split among different members of a shareholder proponent's slate). We note a 2016 Harvard study which concluded that the use of universal proxy cards would be unlikely to lead to more proxy contests or to significantly advantage either shareholder proponent or company candidates.¹⁰ Real-world behavior also supports the belief that universal proxy cards would not uniformly favor either shareholder proponent or company candidates—while Trian proposed the use of universal proxy cards at DuPont,¹¹ there have been other cases in which universal proxy cards have been proposed by companies and rejected by shareholder proponents (e.g., Tessera Technologies, Inc. in 2013; Shutterfly Inc. in 2015).¹² In addition, we note that the Proposed Rules contains important safeguards that minimize the potential for abuse—under the Proposed Rules, shareholder proponents would still be required to prepare and file with the SEC their own proxy statements and solicit at least a majority of a company's shareholder base (all of which entails significant time, effort and cost).

By requiring the use of universal proxy cards as has been proposed, the SEC would be supporting good corporate governance by leveling the playing field and providing shareholders that vote by proxy with the same choices available to shareholders who attend an annual meeting in person. The use of universal proxy cards would ensure that shareholders who want to vote by proxy for a “split ticket” are not disenfranchised and that shareholder preferences will be accurately reflected in the results of each election of directors.

We commend the SEC for proposing rules to strengthen shareholder democracy and welcome the opportunity to engage in dialogue and provide additional feedback regarding the matters discussed in this letter. Please contact me if you have any questions or would like to discuss the issues raised in this letter further.

Very truly yours,



Brian L. Schorr
Chief Legal Officer & Partner

⁹ See Universal Proxy Proposing Release, *supra* note 1, at 79165, 79166.

¹⁰ Scott Hirst, Universal Proxies, working paper 1 (Aug. 24, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2805136.

¹¹ See Trian Fund Management, L.P., Trian Comments on DuPont Rejection of Universal Proxy Card (March 3, 2015) (includes text of Trian's Feb. 23, 2015 letter to the DuPont Board proposing the use of a universal proxy card at DuPont's May 13, 2015 annual meeting), available at https://www.sec.gov/Archives/edgar/data/30554/000093041315001013/c80541_dfan14a.htm within proxy solicitation materials filed with the SEC.

¹² See Council of Institutional Investors, FAQ: Why CII Supports the SEC's Universal Proxy Proposal, available at http://www.cii.org/files/issues_and_advocacy/board_accountability/universal%20proxy/11-15-16%20Universal%20Proxy%20FAQ.pdf, at 2.