



January 4, 2017

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

Re: Comments on SEC Release No. 34-79164 – Universal Proxy (File No. S7-24-16)

Dear Mr. Fields:

The Ohio Public Employees Retirement System (“OPERS”) hereby respectfully submits our comments on the proposed amendments to the federal proxy rules published by the U.S. Securities and Exchange Commission (SEC) on October 26, 2016 in SEC Release No. 34-79164 (Universal Proxy) (the Release).¹

Founded in 1935, OPERS is a public pension fund based in Columbus, Ohio. With assets of \$87.3 billion, OPERS is the largest state pension fund in Ohio, the 11th largest public retirement system and the 16th largest retirement system in the United States. OPERS, which recognized its 80th year in 2015, provides retirement, disability and survivor benefit programs for over 1 million public employees throughout the state who are not covered by another state or local retirement system.

Boards of directors are shareowners' representatives at public companies. Proposing and electing a director is the single most important stock ownership right that shareowners can exercise. By electing independent directors who act in the best interests of the company and its shareowners, Shareowners can help define the performance standards against which Management is measured and held accountable. As such, Shareowners should be permitted to utilize a universal proxy, when appropriate, to enhance their ability to vote for better suited directors and hold ineffective directors accountable when they fail to properly monitor and prevent: management misconduct, under-performance or diminishment of shareowner value.

OPERS shares the SEC's interest in ensuring that the “U.S. proxy system as a whole operates with the accuracy, reliability, transparency, accountability, and integrity that shareholders and issuers should rightfully expect.... [S]hould be served by a well-functioning proxy system that promotes efficient and accurate voting.”² The OPERS Board of Trustees has

adopted proxy voting guidelines that reflect our position on the implementation of universal proxy cards³ and would be applicable in most circumstances.

¹ Universal Proxy, 81 Fed. Reg. 79,122 (SEC proposed Oct. 26, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-11-10/pdf/2016-26349.pdf> (the “Release”).

² Concept Release on the U.S. Proxy System, SEC Release No. 34-62495 at 7 (July 14, 2010), <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

³ We use the term ‘universal proxy’ instead of ‘universal ballot’ throughout. A universal proxy refers to a proxy card on which the names of all candidates for nomination to a board of directors appear, regardless of who such candidates were nominated by. In contrast, a universal ballot refers to what is distributed at a shareholders’ meeting for shareholders voting in person, and includes the names of all candidates who have been nominated, permitting the shareholder to select any combination of nominees.

For example, the OPERS Board of Trustees has adopted proxy voting guidelines that state:

Contested Director Elections

“OPERS may desire to vote for a Director(s) who has been nominated by the Board or by a Dissident Shareowner(s). Dissident proxy contests of Directors are assessed by OPERS on a case-by-case basis. OPERS will evaluate: the qualifications and ability to represent the interests of Shareowners by each of the prospective Dissident Director(s) and the prospective Director(s) put forward on the Company’s proxy circular; the validity of the concerns identified by the Dissident Shareowner; the viability of both the Dissident Shareowner’s and Management’s plans; the likelihood that the Dissident Shareowner’s solutions will produce the desired change; recommendations put forward by other Shareowners and proxy advisors; and whether the Dissident Shareowner’s nominee Director(s) represents the superior choice for enhancing long-term value for OPERS. OPERS shall vote accordingly.”⁴

Shareowner Access to the Proxy

“OPERS believes that long-term Shareowners (e.g., owning shares for three years or longer) should have the right to nominate an individual(s) to stand for election to the Board of a Company that the Shareowner, or a group of Shareowners, own, subject to an ownership threshold (e.g., 3%), alongside Management-proposed Directors, at no cost to the Shareowner, and at no disadvantage to the Shareowner-nominated Director (e.g., Management-nominated and Shareholder-nominated Directors and short bios for each listed seriatim), and to have Shareholder-nominated Directors included on the Company’s proxy card (i.e., on a Universal Proxy Card).

Proxy access mechanisms should provide Shareholders with an equal opportunity to use this right without stipulating overly restrictive requirements for use, and also provide assurances that the mechanism will not be subject to self-interest by short-term investors, investors without a substantial investment in the Company, or investors seeking to take control of the Board for purposes other than the creation of long-term sustainable value for all Shareowners. Staff will review proposals regarding the adoption of proxy access on a case-by-case basis, and vote based on the foregoing criteria.”⁵

Based on the foregoing, OPERS is pleased to offer the following comments:

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

SEC Request for Comment 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?*⁶

OPERS supports the proposed amendment to the “bona fide nominee rule” to change the requirement that a nominee consent to being named in “the” (specific) proxy statement to require that the nominee consent to being named in “a” (any) proxy statement for the next meeting at which directors are to be elected. OPERS believes that the proposed amendment will facilitate the implementation of universal proxy cards by removing the requirement that director nominees provide specific consent to being named in the proxy card of an opposing party. The proposed reform would allow shareowners to vote among company and director nominees on the same proxy card. OPERS believes that the proposed amendment most effectively provides shareowners with the opportunity to vote for the best candidate to serve on the board of directors as opposed to the current separation of proxy cards.

⁴ OPERS Proxy Voting Guidelines, Guideline IV, Section D(ii) – Contested Director Elections, Page 16, <https://www.opers.org/pdf/governance/proxy-voting-guidelines.pdf>, last revised December 2013.

⁵ OPERS Proxy Voting Guidelines, Guideline V, Section A(vii) – Shareowner Access to the Proxy, Page 20, <https://www.opers.org/pdf/governance/proxy-voting-guidelines.pdf>, last revised December 2013.

⁶ Release, *supra* note 1 at 79,129

The Release notes potential concerns that dissident naming of registrant nominees could imply that the registrant or the registrant's nominees support the dissident's nominees. OPERS believes that this could be addressed by requiring that each party's proxy card include the nominees of all other parties and be grouped together, clearly represented as competing slates allowing shareowners to vote by proxy for their preferred mix of candidates. In addition, each party will need to clearly identify which nominees they encourage shareowners to vote for on their respective proxy cards and which nominees they do not support in their respective proxy statements.

IV. Mandatory Use of Universal Proxies

SEC Request for Comment 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?*⁷

OPERS believes that the Universal Proxy Requirement should be mandated as proposed, since it more effectively replicates in-person attendance at a shareowners' meeting, which permits shareowners to vote for their preferred combination of nominees from both slates. Universal proxy cards would remedy this inconsistency by allowing shareowners to vote among company and director nominees on the same proxy card; providing shareowners the opportunity to fully exercise their franchise by proxy.

OPERS appreciates the opportunity to express its views on the SEC's proposal regarding Universal Proxies for shareowners.

Thank you for your consideration. Please do not hesitate to contact us if you have any questions.

Sincerely,



Karen Carraher
Executive Director



Patti Brammer
Interim Corporate Governance and Employer
Services Officer

⁷ *Id.* at 79,132.