



California State Teachers'  
Retirement System  
Anne Sheehan, Director of Corporate Governance  
100 Waterfront Place, MS-04  
West Sacramento, CA 95605-2807

January 9, 2017

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

**Re: File No. S7-24-16, Release 34-79164, Universal Proxy – Proposed rule**

Dear Mr. Fields:

I am writing on behalf of the members of the California State Teachers' Retirement System (CalSTRS) in response to the Securities and Exchange Commission's (SEC) proposed rule on the use of universal proxies in all non-exempt solicitations in connection with contested elections of directors other than those involving registered investment companies and business development companies.

CalSTRS' mission is to secure the financial future and sustain the trust of California's educators. We serve the investment and retirement interests of more than 896,000 plan participants.<sup>1</sup> CalSTRS is the largest educator only pension fund in the world, with a global investment portfolio valued at approximately \$193 billion as of November 30, 2016.<sup>2</sup> The long-term nature of CalSTRS liabilities, the composition of its portfolio and the Teachers Retirement Board's fiduciary responsibility to its members make the fund keenly interested in the rules and regulations that govern the securities market. We have a vested interest in ensuring shareholder protections are safeguarded within the SEC's rules and regulations.

We thank the Commission for the opportunity to support and comment on the well-researched, prudent and attentive proposed rule on Universal Proxy. As a long-term shareholder of more than 8,000 global securities, CalSTRS does not take lightly its right to vote as a shareholder in a publicly listed company (corporation, registrant). The right to vote in the annual shareholders meeting of a corporation is one of the most important privileges conferred by stock ownership. Voting makes a difference. The exercise of voting rights is a key tool for making our voice heard by the company's directors and management which we believe may affect shareholder value. CalSTRS executes its voting rights in a manner consistent with CalSTRS financial interest on behalf of our teachers, CalSTRS Corporate Governance Principles and best corporate governance practices.<sup>3</sup>

<sup>1</sup> CalSTRS at a Glance, Fact Sheet: <http://www.calstrs.com/sites/main/files/file-attachments/calstrsataglance.pdf>

<sup>2</sup> CalSTRS Current Investment Portfolio for the period ending November 30, 2016. <http://www.calstrs.com/current-investment-portfolio>

<sup>3</sup> CalSTRS Corporate Governance Principles, July 14, 2016. [http://www.calstrs.com/sites/main/files/file-attachments/corporate\\_governance\\_principles\\_1.pdf](http://www.calstrs.com/sites/main/files/file-attachments/corporate_governance_principles_1.pdf)

Additionally, CalSTRS as a member in the International Corporate Governance Network (ICGN) supported approval of investor stewardship obligations through the ICGN Global Stewardship Principles:

*Investors with voting rights should seek to vote shares held and make informed and independent voting decisions, applying due care, diligence and judgment across their entire portfolio in the interests of beneficiaries or clients.*<sup>4</sup>

Current proxy rules do not allow shareholders to fully exercise their voting rights. Whether a vote is cast through a proxy or attending a meeting, CalSTRS strongly believes shareowners should have the ability to fully exercise their votes for any combination of director candidates in contested elections. CalSTRS supports the proposed rule on the mandatory use of universal proxies that would include the names of registrant and dissident nominees, allowing shareholders to vote by proxy that replicates voting in person at a shareholder meeting.

As outlined in Commissioner Kara Stein’s statement on the use of universal proxies, “Specifically, the proposal seeks to correct an anomalous feature in existing Commission rules that limits voter choice based on whether a shareholder physically attends a meeting or votes by proxy.” Commissioner Stein emphasized, “When enacted, the Securities Exchange Act of 1934 created the foundational principles, for maintaining robust and efficient capital markets in the United States. Congress made it clear that fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.”<sup>5</sup>

### **Mandatory Use of Universal Proxies**

Below, we outline CalSTRS summary perspective on the proposed amendments to the federal proxy rules to require the use of mandatory universal proxies in all non-exempt solicitation in connection with contested election of directors. We fully endorse the mandatory system for universal proxies and agree with the SEC, the mandatory universal proxy rule would mitigate potential shareholder confusion and logistical issues that may result from allowing the parties in a contested election to choose whether to use a universal proxy. We do not support an optional use of universal proxy as this would undermine the voting process and possibly disenfranchise shareholders. We view the suggestion of special accommodations, necessitating shareholders to take additional steps to request a proxy card, as objectionable and impairing the intent of the process.

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<sup>4</sup> ICGN Global Stewardship Principles, Part 1 Principles, #5, 2016. <http://icgn.flpbks.com/icgn-global-stewardship-principles/#p=11>

<sup>5</sup> Securities and Exchange Commission, Statement on the Proposed Rule to Require the Use of Universal Proxies, Commissioner Kara M. Stein, Oct. 26, 2016. <https://www.sec.gov/news/statement/statement-stein-universal-proxies-10-26-2016.html>

Although we do not directly respond to each of the questions outlined in this proposed rule, we reference and agree with the Council of Institutional Investors comprehensive response letter to the SEC's request for comment.<sup>6</sup>

## **Proposed Amendments – Revisions**

### *II A. 1. Bona Fide Nominee Rule*

Since shareholders voting by proxy are generally limited in their choice of nominees by Exchange Act Rule 14a-4(d)(1), the “bona fide nominee rule,” we support the SEC removing this requirement that director nominees provide specific consent to being named in the proxy card of an opposing party. This change would enable parties in a contested election to include all director nominees on their proxy card, including all nominees of an opposing party, allowing shareholders the ability to exercise their voting rights.

If the Bona Fide Nominee Rule were amended without adoption of the Universal Proxy Requirement, we would still recommend requiring at a minimum all names of an opposing party's nominees be included with the notice of the intent to use a universal proxy card to ensure the information provided to shareholders is uniform and consistent. However, we do believe, both the registrant and dissident should clearly state, “...inclusion of the other parties nominees on the proxy card should not be construed as an endorsement of the other parties' views or nominees.” It is also important, that both the registrant and dissident clearly identify which nominees they encourage shareholders to vote for on their respective proxy cards and which they do not support in their respective proxy statements.

### *II A. 2. Short Slate Rule*

Although Rule 14a-4(d) (4), the “short slate” rule, permitted a dissident seeking to elect a minority of the board to solicit authority to vote for some of the registrant nominees on its proxy card and provided shareholders with some additional choices, shareholders are still limited to voting by proxy for the combination of nominees that either the dissident or registrant chooses. CalSTRS supports the elimination of the short slate rule, allowing a dissident the ability to include recommendations for its preferred registrant nominees in its proxy materials with the inclusion of registrant nominees on the dissident's proxy card.

CalSTRS supports the proposed new Rule 14a-19(e) to require proxy cards in a contested election include the names of all nominated candidates for election to the Board. We believe the Universal Proxy rules should permit shareholders to select the combination of nominees that best aligns with their interests in any contested election. Shareholders must be able to choose, whether a dissident or management is soliciting proxies that may consist of a minority or a majority of the board of directors.

### *II A.3. Solicitation without a Competing Slate*

CalSTRS supports the SEC's premise that permitting proponents to solicit authority to vote on some or all of the registrant nominees is appropriate even without a competing slate.

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<sup>6</sup> Council of Institutional Investors Comments on SEC Release No. 34-79164, File No. S7-24-16, Universal Proxy, December 28, 2016. <https://www.sec.gov/comments/s7-24-16/s72416-1450259-130101.pdf>

### II B.2. Dissident's Notice of Intent to Solicit Proxies

CalSTRS recognizes the need for the Commission to establish a notice requirement to provide a definitive date by which the parties in a contested election will know the use of universal proxies is triggered. We agree with proposed Rule 14a-19 that would require a dissident to provide the registrant with the names of its nominees no later than 60 calendar days prior to the anniversary of the previous year's annual meeting date. We agree this rule should exist even if a registrant does not have an advance notice provision in their governing documents to allow time to prepare a universal proxy card and to file it with their preliminary proxy statement.

CalSTRS agrees with the importance and the need for the registrant to include disclosure on how the corporation intends to treat proxy authority in the event the dissident abandons its solicitation or fails to comply with proposed Rule 14a-19. However, registrants must provide dissidents explicit and adequate notice if management changes the annual general meeting date. Also, the registrant must clearly outline whether additional filing requirements are necessary if dates are changed.

### II B. 3 Registrant's Notice of Its Nominees

As we find it important to establish a requirement that dissidents provide a registrant a notice requirement by a definitive date, it is legitimate to require the registrants provide the dissident with the names of their nominees no later than 50 calendar days prior to the anniversary of the previous year's annual meeting date. We agree the establishment of this date requirement not only allows the dissidents to file their definite proxy statements and universal proxy cards but allows timely solicitation of shareholders. Additionally as outlined above, if dates are changed, both the registrant and dissident need to be clear and explicit on additional filing requirements.

### II. B. 4 Minimum Solicitation Requirements for Dissidents

CalSTRS supports the minimum solicitation requirements for dissidents to solicit a majority of the voting power as it provides an equitable financial commitment through the time, effort and costs entailed with filing proxy materials with the SEC. We believe this balance will ensure dissidents are fully committed to this process. In addition, we suggest the SEC consider whether a further amendment to the rule is essential to ensure a minimum number of registered shareowners are solicited to prevent frivolous use of the Universal Proxy rule. Furthermore, as a compliance mechanism, dissidents should provide the registrant with a written statement indicating that the dissident has taken the necessary steps to solicit shareholders of at least a majority of the voting power of shares.

### II. B.5. Dissemination of Proxy Materials

CalSTRS concurs with the requirements that dissidents would be responsible for disseminating information about their nominees to shareholders entitled to vote on the election of directors. Each party (registrant and dissident) would be required to provide detailed disclosures about its own nominees only, directing readers to the other party's solicitation materials (via the SEC's website) for information about the other party's nominees. Currently Item 7 of Schedule 14 A requires detailed disclosure about director nominees, including name, age, business experience for the last five years, and involvement during the past 10 years in certain types of judicial and administrative proceedings.

### II. B. 6. Universal Proxy Form

CalSTRS accepts the requirement that each party (registrant and dissident) provide separate universal proxy cards that include the names of both parties' nominees and designates which are its own representatives. However, our preference as a shareholder would be the use of a single universal proxy card, though we concede this may not be workable for the registrant and dissident.

We recognize the importance that universal proxies be clear and fairly present information so that shareholders can determine the most qualified board candidates. We support the SEC's recommendation on the following presentation and formatting requirements for all universal proxy cards used in contested elections:

- The proxy card must clearly distinguish between company nominees, dissident nominees, and any proxy access nominees;
- Within each group of nominees, the nominees must be listed in alphabetical order by last name on the proxy card;
- The same font type, style and size must be used to present all nominees on the proxy card;
- The proxy card must prominently disclose the maximum number of nominees for which authority to vote can be granted; and
- The proxy card must prominently disclose the treatment and effect of a proxy executed in a manner that grants authority to vote for more nominees than the number of directors being elected, in a manner that grants authority to vote for fewer nominees than the number of directors being elected, or in a manner that does not grant authority to vote with respect to any nominees.

CalSTRS supports the option that, if both parties have proposed a full slate of nominees, the shareholders have the ability to vote for all dissident nominees as a group or the registrant nominees as a group. However, we believe that shareholders should still have the ability to pick and choose between nominees and must not necessarily vote for the full slate of either the registrant or dissident.

Additionally, we emphasize the importance that both parties should be obligated to prominently disclose the maximum number of nominees that can be voted on to ensure a shareholder does not over-vote or is aware of an under vote. This is extremely important for retail investors, as institutional investors, such as CalSTRS utilize online voting platforms that prevent over-voting or provide a flag if under-voting the number of candidates up for election. We support the SEC including a sample universal proxy card in the adopting release and believe it will not only clarify the requirements but allow shareholders the ability to more fully understand the requirements before voting on a universal proxy card.

### II. B. 7. Timing of Universal Proxy Solicitation Process

CalSTRS is supportive of the timing of the Universal proxy solicitation process and required timeframe outlined in the proposed rule on page 82.

*Additional Revisions – Director Election Voting Standards Disclosure and Voting Options*

CalSTRS strongly supports the amendment of Rule 14a-4(b) to mandate the inclusion of an “against” voting option in lieu of a “withhold authority to vote” option on the proxy form for the election of directors and the ability of shareholders, that neither support nor oppose a director, to “abstain” in a director election governed by a majority voting standard. Nonetheless, the effect of an “against” vote and an “abstain” vote should be fully disclosed as to the impact of the vote in a plurality, majority or plurality-plus voting standard.

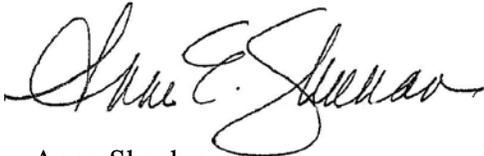
Furthermore, we agree with the CII’s detailed response to further request the SEC to amend the proxy rules on director elections to:

- Prohibit companies from providing an “against” voting option, if marking that choice has no legal impact on the outcome of the election, and
- Require companies to refer to voting options consistently throughout the proxy materials.

In closing, we fully support the above proposed amendments that would permit shareholders to vote by proxy for any combination of candidates for the board of directors, as if they attended the shareholder meeting in person. Voting by proxy should always be the same as voting in person.

Thank you for this proposed rule which will benefit shareholders and for the opportunity to respond. If you would like to discuss this letter further, please feel free to contact me at my number above or Mary Hartman Morris at [REDACTED], [REDACTED].

Sincerely,



Anne Sheehan  
Director of Corporate Governance  
California State Teachers’ Retirement System