

February 9, 2017

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

Re: File Number S7-24-16 Universal Proxy

Dear Mr. Fields:

The Securities and Exchange Commission's (Commission) Universal Proxy effort is based on the principle that the Commission should ensure that the corporate proxy process functions, "as nearly as possible, as a replacement for an actual in-person meeting of shareholders."¹

The American Business Conference, a coalition of midsize growth companies, supports the efforts of the Commission to ensure that shareholders have the same voting choice and flexibility whether they attend an annual meeting or submit a Voting Instruction

¹See also, Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Explore Universal Proxy Ballots (Adopted July 25, 2013). (Citing Press Release, SEC Votes to Propose Rule Amendments to Facilitate Rights of Shareholders to Nominate Directors, 2009-116, available at <http://www.sec.gov/news/press/2009/2009-116.htm> ("Congress gave the Commission authority over the corporate proxy process as a means of ensuring that it functions, as nearly as possible, as a replacement for an actual in-person meeting of shareholders. Refining the proxy process so that it replicates, as nearly as possible, the annual meeting is particularly important given that the proxy process has become the primary way for shareholders to know about the matters to be decided by the shareholder and to make their views known to company management." [emphasis supplied]). See also, "Ensuring the Proxy Process Works for Shareholders," Commissioner Luis A. Aguilar, Feb. 19, 2015. "The Commission's proxy rules operate on the principle that the proxy process should function, as close as possible, to replicate the rights of a shareholder who attends the annual meeting in person (citing *Facilitating Shareholder Director Nominations*, SEC Release No. 33-9046 (June 10, 2009) at 9, available at <http://www.sec.gov/rules/proposed/2009/33-9046.pdf>. See also, "Building Meaningful Communication and Engagement with Shareholders," Chair Mary Jo White, Society of Corporate Secretaries and Governance Professionals 69th National Conference, Chicago, Illinois, June 25, 2015 ("No one specifically called into question the fundamental concept that our proxy system should allow shareholders to do through the use of a proxy ballot what they can do in person at a shareholders' meeting. Given the diverse set of views represented at our [proxy voting] roundtable, I took this as at least a bit of a breakthrough.")

Form. This effort is especially important for retail shareholders, since the proxy is the vehicle by which most individual shareholders exercise their right to participate in the governance of the companies in which they have invested.

The question is, how much does a Universal Proxy help the Commission realize its goal? We think it is, at best, a partial solution. In practice, it would matter in only a handful of highly contested annual meetings each year. Moreover, as proposed, the Universal Ballot would widen the gap that already exists between the ability of institutional shareholders and retail shareholders to participate in corporate governance decisions.

Under the proposal, dissidents would be required to solicit only the largest shareholders. Since voting power in most companies is concentrated among institutional investors, dissidents would of course see that soliciting those investors would be the most efficient way to achieve the 50 percent threshold they require.

Given the already dismal state of retail shareholder participation in corporate annual meetings, the Commission should not pretend that these shareholders are being treated fairly by relegating them to (1) finding the notice of a dissident slate in the company proxy materials and (2) searching the EDGAR labyrinth to find the means of exercising their voting rights on an equal basis with actively solicited institutions.

One could read this provision of the proposed rule as suggesting that the Commission intends to replicate the annual meeting experience for institutional shareholders but not for retail shareholders.

Facilitating Retail Voting In a statement in support of Universal Proxy, Commissioner Kara Stein voiced a belief that is also frequently cited by SEC officials: “Shareholders have both a right and a responsibility to cast their votes, and we should be doing all we can to facilitate that.”² While Commissioner Stein’s comment regarding a *responsibility* to vote applies to institutional fiduciaries,³ the right of all shareholders to vote their shares is clear and the SEC most certainly “should be doing all it can to facilitate” voting by all shareholders. The Universal Proxy does not do that, for reasons stated above. A more comprehensive reform is needed.

For nearly a decade, SEC officials have lamented the dismal state of individual or “retail” shareholder voting. This concern is appropriate since the SEC created the Notice and

²Remarks to the Council of Institutional Investors, Commissioner Kara M. Stein, Washington, D.C., May 8, 2014.

³ Unlike institutional shareholders, individual holders have no legal *duties* regarding voting. Nowhere in the law is there an obligation of a typical individual shareholder to vote. Individual shareholders are *owners* of a form of *property*, a security. The right to vote at annual meetings is part of the security. To vote (or not) is the exercise of a right that is part of the bundle of rights that make up the benefits of owning that property.

Access mode of delivering proxy materials to shareholders. It was predictable that the Notice and Access mode of delivery would further diminish the already low rate of retail shareholder voting.

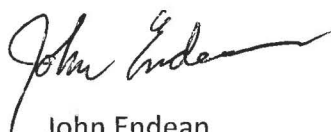
Individual shareholder voting results remain low.⁴ In light of this situation, various efforts have been made to offer digital technology in aid of individual shareholders' voting through their "street name" brokerage accounts. ABC has supported these efforts. We understand that is a simple matter of software programming to give all shareholders the ability to vote by means of personalized, revocable advanced voting instructions (AVI) to their brokers. This is not different in kind from tools available to institutional voters.

One of the principle reasons for the SEC's refusal to allow AVI (also called "Client Directed Voting" or "CDV") is the argument that a broker should not be permitted accept a client shareholder's instructions as to voting preferences before the shareholder receives the proxy materials for a particular shareholder meeting. This notion seems to be based on the idea that shareholders should be "informed" before they provide even revocable voting instructions in a manner unfortunately reminiscent of literacy tests in the political sphere.

An individual shareholder, attending an annual meeting would be appropriately outraged if anyone, particularly a corporate official, stopped them at the door because she was deemed not properly informed on the matters up for a vote. An informed voting requirement in the proxy system is therefore wholly inconsistent with the idea of recreating the in-person annual meeting experience for shareholders. It is an artificial hurdle too often put up by people outside the Commission who may have an interest in suppressing the retail vote.

Given the main principle upon which the Universal Proxy effort is based -- the replication of the in-person meeting -- the SEC should reject any use of "informed voting" as a basis for blocking the long overdue development of AVI/CDV. It is obvious that the "informed voting" notion has no place at an in-person annual meeting. Why should it with the proxy vote?

Sincerely,

A handwritten signature in black ink, appearing to read "John Endean", with a stylized flourish at the end.

John Endean
President

⁴ See, e.g., John Endean, "The Untapped Power of Individual Investors," *The Wall Street Journal*, October 5, 2014.