



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

February 27, 2017

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

Re: Proposed Rule: Universal Proxy (File No. S7-24-16)

Dear Mr. Fields:

The Mutual Fund Directors Forum (“the Forum”)¹ welcomes the opportunity to comment on the Commission’s recent rule proposals regarding the use of universal proxies in contested board elections.²

The Forum is an independent, non-profit organization for investment company independent directors and is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through education and other services, the Forum provides its members with opportunities to share ideas, experiences and information concerning critical issues facing investment company independent directors and also serves as an independent vehicle through which Forum members can express their views on matters of concern.

I. Comment

Our comments are limited to those aspects of the Commission’s proposal that could impact the manner in which the directors of registered investment companies are elected. Fundamentally, we support the Commission’s initial determination to exclude registered investment companies from its universal proxy proposal. We outline below the reasons for concurring in the Commission’s approach.

¹ The Forum’s current membership includes over 887 independent directors, representing 122 mutual fund groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

² *See* Universal Proxy, Release Nos. 34-79164 & IC-32339 (File No. S7-24-16), 81 FR 79122 (November 10, 2016) (the “Release”).

A. Open-End Mutual Funds

The directors of open-end mutual funds play a critical role in protecting the interests of fund investors, whether through annually approving a fund's advisory contract, monitoring the fund's and adviser's compliance with relevant law, overseeing the manner in which conflicts of interest between the fund and its adviser are resolved and otherwise seeking to ensure that the fund is operated in the best interests of its shareholders. This system of fund regulation, with its steadily increasing focus on the role of independent fund directors, has evolved over the past 75 years and is virtually unique when compared to other forms of fund regulation and corporate governance prevalent globally. As we explain below, we believe that the unique effectiveness of fund governance would be undermined were open-end funds to be required to use universal proxies in contested elections.

First, contested elections for open-end fund directors virtually never occur – as the Release itself notes, there are effectively no examples of contested elections in recent history. More than that, unlike publicly-listed companies, which are generally required to solicit proxies annually, funds solicit proxies and ask shareholders to elect or reelect their fund's directors on a much less frequent basis. Instead, the regulatory structure under the Investment Company Act protects shareholders' interests by relying on the fund's independent directors to nominate and seat their own successors. Only when the number of directors elected by fund shareholders drops below two-thirds is the fund required to solicit proxies to add directors to the board. Given this environment, imposing proxy regulations designed to govern both yearly solicitations and the potential for contested director elections on funds would be unnecessary.

Second, most fund boards oversee more than one fund within a fund complex. In some cases, the fund board is unitary, and oversees all funds within a single fund complex. In other situations, a complex may have a small number of boards, each overseeing a cluster of funds within the complex. Whatever the form, however, the oversight of multiple funds within a complex by a single board provides the directors on that board with numerous advantages, including efficiencies of scale in overseeing common aspects of fund operations, permitting directors to gain comprehensive knowledge of the operations of the adviser and other fund service providers, and ultimately allowing directors to deal more effectively with management on behalf of the fund's shareholders. Creating a proxy system that could encourage contested elections for the board of a single fund would thus be counterproductive, potentially undermining the advantages unitary and cluster boards create for independent directors and thus for the shareholders of open-end funds.

Finally, shareholders of open-end funds have the ability to redeem their fund investments at net asset value. This stands in contrast to publicly traded companies. While shareholders in public companies do have the ability to sell their shares at a market determined price, contested elections typically revolve around more complex and nuanced disputes over whether the board and management are appropriately deploying the company's assets to enhance and maximize shareholder value going forward. Given this dynamic, the ability to replace some or all of the company's directors may well be important to the shareholder's ability both to influence the corporation's strategy and to obtain a higher value for their stake in the future. This is simply not true of fund shareholders, who can always redeem shares for their net asset value.

In sum, the universal proxy proposal responds to a problem that does not exist with respect to open-end funds, would add little of value for fund shareholders and could undermine the important benefits that independent directors and fund shareholders obtain via unitary and cluster boards.

B. Closed End Funds and Business Development Companies

We also support the Commission's initial decision to exclude closed-end funds ("CEFs") and business development companies ("BDCs") from the scope of the rule. CEFs and BDCs do often trade as listed securities, and when they do so, they typically are required to solicit proxies annually. These funds also sometimes are the subject of contested director elections. However, the reasons that underlie these contests demonstrate that the universal proxy rule would serve little purpose if applied to these types of investment companies.

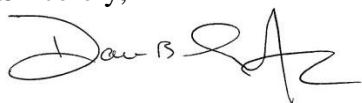
In particular, virtually the only reason for seeking to unseat the board of a CEF or BDC is to attempt to close the discount between the price at which the fund trades and its net asset value by requiring the fund to engage in a tender offer or by open-ending or liquidating the fund. These strategic questions are typically either/or decisions. Barring reaching resolution with the fund, shareholders supporting these strategic changes typically attempt to unseat and replace the entire board through a contested election with a board that will impose the approach to closing the discount that they support. This stands in contrast to contested elections at publicly-traded companies, where shareholders often prefer to add the business insights one or a small number of dissident directors can bring to the company's business strategy to the existing board. Universal proxies are thus unnecessary for CEFs or BDCs, as shareholders voting in such elections are likely to choose either the approach and board favored by the dissident or the approach and board favored by fund management. Shareholders, irrespective of their viewpoint, are thus unlikely to favor a board with divided loyalty, rendering a universal proxy unnecessary.

Hence, universal proxies represent an unneeded addition to the regulation of BDCs and CEFs. We thus encourage the Commission to maintain its proposed approach of not including these funds within the scope of any universal proxy rule it may adopt.

II. Conclusion

For the reasons outlined above, we support the Commission's initial decision to exclude registered investment companies from the scope of its proposed universal proxy rule. We would welcome the opportunity to further discuss our views with you. Please feel free to contact Susan Wyderko, the Forum's President, at [REDACTED] or David Smith, the Forum's General Counsel, at [REDACTED] if you should like to do so.

Sincerely,



David B. Smith, Jr.
Executive Vice President and General Counsel