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House Attempts to Prevent Efforts by SEC to Propose Universal Ballots

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The House voted 243-180 yesterday to add language to a fiscal year spending bill that would bar the SEC from writing rules to require universal ballots in proxy contests. The spending bill passed late Thursday.

Introduced by Representative Scott Garrett (R–N.J.), the text of the amendment states that none of the funds may be used by the SEC to propose, issue, implement, administer, or enforce any requirement that a proxy solicitation or other authorization to vote in a director election can be made using a single ballot that lists both candidates nominated by the company and those nominated by other proponents and would permit shareholders to select among the individuals listed.

In proposing the amendment, Rep. Garrett stated that it would prohibit "special interests from having their agendas advanced by Washington bureaucrats." The notion of special interests came up several times in his discussion, as he argued that the universal ballot initiative has been pushed through by those groups because it would allow them to easily nominate candidates, and ultimately increase the likelihood of proxy fights.

He criticized Chair White for failing to undertake a comprehensive review of the entire proxy system by letting the proxy plumbing concept release languish for six years and then, "out of the blue," making universal ballots a priority project. Instead, the SEC should focus on getting retail investors more involved, which was one of the initiatives in the concept release.

Representative Garrett had previously sent Chair White a letter back in July 2015 after she made a speech in which she indicated that she had directed the Commission staff to develop rulemaking recommendations related to universal proxy ballots. The letter complained that rather than conducting a comprehensive approach toward reforming the proxy system, proposing universal ballots would likely exacerbate the tendency toward focusing on short-term results and favor certain market participants rather than all shareholders.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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