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Beware the Universal Proxy Card

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One of the most high-profile proxy contests to use a universal proxy card ended on Tuesday, with some last-minute drama thrown in.

The board of SandRidge was engaged in a proxy contest with Icahn Capital. In May, it announced that it had expanded its board to seven members in order to include two Icahn nominees on its ballot. Icahn had refused to settle with the company after it offered to appoint those nominees to the board.

The company's white proxy card contained five company nominees and two Icahn nominees. Icahn's gold proxy card included only five of his nominees. The company stated that both ISS and Glass Lewis supported Icahn having minority, but not controlling, representation on the board, by recommending in favor of four of the company's nominees and three Icahn nominees.

A **company filing** on Monday was titled "Changing Your Votes For Individual Directors Could Have the Unintended Consequence of Handing Control to Icahn." In it, the company complained that in private meetings, Carl Icahn recently recommended that shareholders vote for one of his nominees on the gold card instead of one of the Icahn nominees listed on the white card. The company accused Icahn of attempting to convince shareholders to "swap just enough votes" so that four Icahn nominees – the two named on both the white and gold cards, along with two named only on the gold card – are all elected, thereby granting Icahn control of the board.

The company called this a "manipulation," with Icahn "engaging in a calculated effort to game our use of the universal proxy card," which would result in essentially "distort[ing] the results of the election in ways that fundamentally conflict with the intention of our shareholders that our nominees retain control of the Board."

According to news reports, preliminary results on Tuesday indicated that Icahn had won at least four seats, the company had won two, and the last one was too close to call.

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.

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com