

CII Petitions the SEC to Adopt Universal Proxy Cards in Contested Elections

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The Council of Institutional Investors (CII) has [petitioned](#) the SEC for the ability to “mix and match” director candidates in a universal proxy. For contested elections, they ask that the SEC eliminate the requirement to obtain a nominee’s consent to be named on a proxy card and allow shareholders to vote for their “preferred combination” of shareholder and management nominees on a single card, an option that is only available to those attending the meeting in person.

CII complains that shareholders currently only have the option of supporting either the management slate of directors or the particular combination chosen by dissidents in a short slate contest. They are seeking the ability to “split their ticket” and freely choose among the two sets of candidates. Attending a meeting to exercise their rights is declared “expensive and impractical.”

The “bona fide nominee” rule by which a person can be named as a nominee only after consenting should be amended. CII argues that the existing distinction between shareholder proponents running a short slate versus seeking to replace a majority of directors is not justified, and there is no reason why a shareholder’s ability to exercise his or her voting power should depend on the number of people being nominated.

The petition uses the example of the 2009 proxy contest between Target and Pershing Square, where Pershing Square sought, but was denied permission by the company, to circulate a universal proxy naming all candidates. In other situations, CII notes, the bona fide nominee rule can be detrimental to incumbent boards. In the contest involving Tessera Technologies, the SEC rejected the company’s efforts to provide for a proxy card that listed all six of its management nominees while including a write-in slot for two additional nominees from Starboard. Starboard had rejected the company’s attempt to formulate a universal proxy.

Each party can continue to pay for its own campaign and have its own materials, with biographical information needing only to appear on the particular party’s proxy statement. Broadridge is already capable of handling universal proxies in Canada, CII states. The petition also suggests a number of possible reforms to help facilitate the changes, including making clear the maximum number of candidates who can be selected, a neutral style for the proxy card, and similar disclaimers that are currently on short slate cards as to whether the candidates named will actually serve if they did not provide consents.

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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