

Increased Focus on Universal Proxy Cards for Proxy Contests

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With universal proxy cards as the recent focus of an SEC roundtable, CII asked the SEC to prioritize facilitating universal proxies on the SEC's regulatory agenda. CII had already made this the subject of a rulemaking petition to the SEC in January 2014, which we described [here](#).

In its letter, CII argues that investors are currently disenfranchised in a proxy contest because they have no practical ability to "split their ticket" and vote for a combination of shareowner nominees and management nominees without attending the meeting. Although SEC roundtable participants disagreed over whether the use of universal proxies would favor company-nominated or dissident-nominee candidates, CII believes that this determination should be irrelevant, with the focus being on providing investors with the ability to exercise their right to vote. CII notes that Commission guidance is needed as to the design of the universal proxy card, and it may be appropriate for the Commission to require nominees to be grouped separately by slate.

The debate over universal proxy cards is more than theoretical in DuPont's proxy contests. Trian asked DuPont's board to permit a universal proxy card that included both DuPont's and Trian's nominees for the 2015 election, where Trian has 4 nominees up for election.

The company [responded](#) that the use of a universal proxy card would not be in the best interest of their 1,400 institutional and 60,000 individual shareholders because (a) there has only been limited use of universal proxy cards in a few unusual situations, and never in a contest at a company of any sizeable market cap; (b) the company has serious concerns about the ability of the existing infrastructure to support the use of a universal proxy card, and it could undermine retail shareholders' access; and (c) the SEC has not yet adopted rules or provided implementation guidance on the use of a universal proxy card.

Trian also included a nonbinding shareholder proposal submitted under Rule 14a-8 in the company's proxy statement that asks the board to repeal all bylaws it adopted without shareholder approval after August 12, 2013, and before the company's annual meeting. The company noted that none have been adopted since that time.

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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