

Universal proxy ballots for contested director elections

New SEC rules go into effect this summer.

A “universal proxy” refers to ballots that contain directors nominated by both management and other soliciting persons (dissidents). Issuers are required to use a universal proxy ballot when dissidents meet certain solicitation thresholds (that is, they send materials to at least 67 percent of the outstanding shares).

The universal proxy will allow shareholders using a universal proxy ballot to vote for a combination of director candidates from both management and dissidents. They will not have to choose one slate or the other. Previously, only shareholders who attended the annual meeting in person were, as a practical matter, able to vote for a combination of directors.

The new rules apply to any contested election held after August 31, 2022. Proxy materials will need to comply with the new rules prior to that date, given the solicitation period.

Broadridge is implementing the new rules and is ready to support you.

WHAT DO THESE NEW RULES ENTAIL?

Management and opposition do not need to use the same card or ballot. However, each card must reflect both slates. Moreover, several formatting rules apply; namely, universal proxy ballots must:

- Set forth the names of all duly nominated director candidates,
- Provide a means for shareholders to grant authority to vote for the nominees,
- Clearly distinguish among registrant nominees, dissident nominees, and any proxy access nominees.

Within each group of nominees, names must be listed in alphabetical order (by last name) on the proxy card. The same font type, style and size must be used to present all nominees on the proxy cards.

The proxy cards must prominently disclose the maximum number of nominees for which authority to vote can be granted. They must also prominently disclose how votes are treated if a shareholder votes for more (or for fewer) nominees than the number of seats up for election.

Where both parties have presented a full slate of nominees and there are no proxy access nominees, the universal proxy card can provide the ability to vote for all dissident nominees, as a group, and all registrant nominees, as a group.

In addition, there are some changes that will apply to all director elections, regardless of whether they're contested. Every proxy ballot sent after August 31, 2022 will need to reflect "against" and "abstain" voting options (where such options have legal effect under state law). The rules also require disclosure in the proxy statement about the effect of all voting options provided.

Our team has the infrastructure, systems, and intellectual capital in place to ensure all proxies we distribute adhere to the new rules.

As you plan your next proxy, be sure to check out our Proxy Design Best Practices resource. Inside, you'll find ideas and strategies to make your next proxy more engaging and accessible.

DISCOVER MORE WAYS TO STAY READY THIS PROXY SEASON.

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