

What Does “Universal Proxy” Mean for You?

A lot of ink has been spilled since universal proxy was first proposed by the SEC five years ago (including [Perkins Coie's summary of the proposal](#)) - and since the SEC [finally adopted](#) a rule that allows for it a few days ago. The new rule takes effect next August. Under the prior framework, dissidents had to use their own proxy card to solicit votes; under the new framework, both management's and the dissident's slate will be on the same proxy card – arguably making it easier for shareholders to check a box and vote for the dissident's slate if they so choose to do so. As with many controversial rulemakings, there can be an overreaction. I've been around the block enough to remember quite a few rulemakings that were portended to be the end of the world - but they wound up being merely a blip on the horizon. I remember other rulemakings that didn't initially create a fuss - but would up having a significant impact on our work lives. It's often hard to predict how a particular rulemaking will truly affect us. In the case of universal proxy, I don't think its far-fetched that mid-cap and smaller companies may face more proxy contests. That's a big deal because proxy contests are a big deal. It's a battle for corporate control. Very stressful for anyone tasked with working on them. And they can be costly. Very costly. So it's worth taking the time to reconsider all of your shareholder defense preparations. Your advance notice bylaws. The composition of your shareholder engagement team - including your third-party resources like proxy solicitors, IR consultants and counsel. Your disclosure controls. Given the heightened importance of climate change, social issues and cybersecurity, your disclosure controls in these areas - and preparation to handle claims that your program and future plans (as publicly disclosed) are inadequate - must be kept in tip-top condition. It is not silly at all to conduct a dry run of what happens when - and who does what - if certain claims are made against your company. Scenario planning like this should be part of your annual compliance program. This also might be the "hook" for you to ask for more resources for your department. Shareholder engagement continues to be of the utmost importance - and given the speed and frequency that institutional investors are updating their voting policies and positions these days, you sure could use some help...

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