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Leading Investor Group Hails SEC Rule Requiring Universal Proxy Cards in Contests for Board Seats

Washington, D.C., Nov. 17, 2021 — The Council of Institutional Investors (CII) applauds the Securities and Exchange Commission (SEC) for today finalizing a rule requiring universal proxies in contested elections for seats on public company boards.

“This should be called ‘the investor choice rule,’” said Amy Borrus, CII’s executive director. “This small but significant reform ensures that investors voting by proxy card—as the vast majority of institutional and individual investors do—can vote for whichever combination of director nominees they think best serves their interests.”

The new rule’s origins go back to a CII rulemaking petition filed in 2014, in keeping with CII’s member-approved policy endorsing universal proxy cards in contested elections at U.S. public companies.

Until now, when there was a contest for board seats, typically over a dispute between the current board and an activist investor involving the company’s direction, most shareholders have not had full flexibility to "split their ticket." That’s because neither company management nor dissidents were required to include all bona fide candidates on their separate proxy cards. Typically, each card has presented a specific slate of preferred nominees.

“Imagine if, in a political election, you could vote only for Democrats or only for Republicans,” said Borrus. “That has been the dilemma facing most investors voting in a proxy contest at U.S. companies.”

To have real choice in a contested election, shareholders generally have had to vote in person at the annual shareholder meeting. But that is costly and time-consuming for many institutional and retail investors.

By mandating universal proxies in contests for board seats, the SEC is simply giving investors who vote by proxy the same choice they would get if they voted in person.

Electing the directors who represent them is a fundamental right of shareholders. It is especially critical when there is a contest among director nominees. Contested elections are pivotal events for companies and their shareholders because board seats, and in some cases, board control, are at stake.

There is no compelling evidence that universal proxy cards would encourage more proxy contests or favor dissidents. The rule does not eliminate the substantial cost and risk associated with waging a dissident campaign.

What the rule *does* do is 1) let shareholders choose from among all board nominees for the combination they believe best serves their interests, and 2) reduce the costs for shareholders who want to split their votes.

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About CII: *The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets, endowments and foundations, with combined global assets that exceed $4 trillion. CII's associate members include non-U.S. asset owners with more than $4 trillion in global assets, and a range of asset managers with more than $40 trillion in global assets under management. CII is a leading voice for effective corporate governance, strong shareowner rights and sensible financial rules that foster fair, transparent and vibrant capital markets.*