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December 15, 2021

The Honorable Sherrod Brown
Chairman
The Honorable Patrick J. Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Universal Proxy*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC) entitled "Universal Proxy" (RIN: 3235-AL84). We received the rule on December 2, 2021. It was published in the *Federal Register* as a final rule on December 1, 2021. 86 Fed. Reg. 68330. The effective date is January 31, 2022.

According to SEC, the final rule amends the federal proxy rules to enhance the ability of shareholders to elect directors through the proxy process in a manner consistent with their ability to vote in person at a shareholder meeting. Specifically, SEC stated it is requiring the use of a universal proxy card in all non-exempt solicitations involving director election contests, except those involving registered investment companies and business development companies. To facilitate the use of a universal proxy card, SEC further stated it is also amending the federal proxy rules to establish certain notice, minimum solicitation, filing, formatting, and presentation requirements, along with other related rule changes consistent with the adoption of a universal proxy requirement. In addition, SEC stated it decided to adopt new disclosure requirements relating to voting standards and further requiring certain voting options for all director elections, whether or not contested.

Enclosed is our assessment of SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: J. Matthew DeLesDernier
Assistant Secretary

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"UNIVERSAL PROXY"
(RIN: 3235-AL84)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) stated that for shareholders who would otherwise incur incremental costs to vote for a combination of candidates that could not be voted for by proxy, such as by attending the meeting in person, the final rule will result in direct cost savings. SEC also stated the final rule will enable shareholders who want to split their vote, but are unwilling (or unable) to bear additional costs, to be able to vote for their preferred combination of nominees to do so without incurring additional costs. SEC further stated the nomination and election of directors by shareholders represents a fundamental governance mechanism that can mitigate conflicts of interest between shareholders and management. While the most direct effect of the final amendments will be to improve the efficiency of the voting process and permit shareholders greater choice when voting by proxy in contested director elections, SEC estimated the final rule will also likely impose direct costs on dissidents and registrants in certain contests. SEC also estimated the final rule may have broader impacts on corporate governance and the relationship between shareholders and management. SEC additionally stated that enabling split-ticket voting could lead to a greater number of boards that are composed of a mix of registrant-nominated and dissident-nominated directors, which may affect the effectiveness of boards, either positively or negatively. Finally, SEC estimated the final rule may provide potential dissidents with a new means of generating publicity for alternative nominees or for the broader concerns behind a contest at a relatively low cost, which could change the nature of interactions between potential dissidents and management.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

SEC conducted a final regulatory flexibility analysis. The analysis discussed: (1) a statement of the needs for and objectives of the final rule; (2) a summary of significant issues raised by public comments; (3) a description of small entities subject to the final rule; (4) a description of projected reporting, recordkeeping, and other compliance requirements; and (5) a summary of agency action to minimize the impact on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory commission, SEC is not subject to the requirements of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

SEC published a proposed rule on November 10, 2016. 81 Fed. Reg. 79122. SEC held a comment period that ended January 9, 2017. SEC opened a second comment period from May 7, 2021, to June 7, 2021. 86 Fed. Reg. 24364. SEC received comments and addressed them in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

SEC determined the final rule contained information collection requirements (ICRs) subject to PRA. The first ICR is “Regulation 14A” associated with Office of Management and Budget (OMB) Control Number 3235-0059. The associated burden with Regulation 14A is 778,802 hours and a cost of \$103,805,312. The second ICR is “Rule 20a-1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations” associated with OMB Control Number 3235-0158. The associated burden with Rule 20a-1 is 113,527 hours and a cost of \$40,012,200.

Statutory authorization for the rule

SEC promulgated the final rule pursuant to section 2 of title 7; section 5221 of title 12; sections 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302 of title 15; and section. 1350 of title 18, United States Code, as well as Public Laws 111-203 and 112-106.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory commission, SEC is not subject to the requirements of the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory commission, SEC is not subject to the requirements of the Order.