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## SEC Closer to Universal Proxy Ballot Rule

By Lindsay Frost December 4, 2015

The **SEC** is getting closer to determining a rule that would allow shareholders to submit dissident nominees on the same ballot as the company's nominees, an associate director at the commission said in a recent speech.

**Michele Anderson**, an associate director in the SEC's Division of Corporate Finance, said during a panel at the **American Bar Association** in November that the commission is considering the details of a universal proxy rule, including whether the rule should be optional or mandatory.

Anderson added, "We're also thinking about whether universal proxies should be limited to just short-slate elections, where there's somebody that's seeking less than a majority of seats on a board, or whether it should be available in all contests."

However, some boards are considering preemptively allowing universal proxy ballots in proxy contests.

SEC chair **Mary Jo White** said in June that boards should "give meaningful consideration" to using a universal proxy card even though there is not a rule in place.

White said that she asked the staff to bring rulemaking recommendations forward but did not clarify the timing. She made the remarks at the **Society of Corporate Secretaries and Governance Professionals** national conference.

**DuPont**, **Shutterfly** and **GrafTech International** addressed universal proxy ballots this spring due to proxy contests.

In May, GrafTech used a universal proxy card for its annual meeting. Meanwhile, activist investor **Marathon Partners** rejected Shutterfly's offer to use a universal proxy card for a proxy contest, and DuPont rejected activist investor **Nelson Peltz**'s recommendation to use a universal proxy card for a proxy contest.

Anderson's comments hinted that the commission needs more time to iron out contentious details of the rule, says **Elizabeth Dunshee**, member of the corporate governance committee of the ABA and shareholder at law firm **Fredrickson & Byron**.

"This rule is still in the early stages; there are a lot of issues with the [universal proxy] card," Dunshee says. "Things like whether the rule would be permissive or mandatory, its application in the context of staggered

boards, the change-of-control implications and the timing of disclosure requirements are all things the SEC is thinking about and wants companies to be thinking about.”

**Bob Lamm**, co-chair of law firm **Gunster**’s securities and corporate governance practice, says a rule could be seen as early as the end of the first quarter or second quarter 2016, but companies are expecting certain parameters of the rule, such as how the nominees are written on the ballot, to be clarified.

“A universal proxy ballot ... [is] a fact- and circumstances-based decision,” Lamm says. “The most important thing is to make it easy for the voting shareholder to understand whose nominees he or she is voting for — that needs to be clear on the ballot.”

The SEC did not provide further comment.

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