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Understanding Universal Proxy Rules and Navigating Increased Shareholder Activism

As we enter the second proxy season under the Universal Proxy Rules, it has become ever more important for companies to understand the Universal Proxy Rules and be prepared to navigate the complexities of potential shareholder activism.

Overview of Universal Proxy Rules

The introduction and adoption of Universal Proxy Rules (Rule 14a-19 of the Securities Exchange Act of 1934) initiated a significant shift in the landscape of corporate governance. These rules, which became effective in 2022, require companies in a contested election to provide shareholders with a universal proxy card containing management and dissident nominees. This regulation is aimed at streamlining the proxy voting process and allowing shareholders to mix and match the nominees proposed by each of management and the activist when voting.

One of the key aspects of the Universal Proxy Rules is the requirement for equal treatment of director nominees. Proxy cards are required to present each nominee's name and identify them as either a management or a dissident nominee. This transparency ensures that shareholders can easily discern and vote for their preferred candidates. Moreover, the rules impose obligations on dissident parties, leveling the playing field for management and dissident parties. A shareholder seeking to run an election contest ("Dissident"), nominating one or more Dissident nominees, is required to provide notice to the company at least 60 calendar days prior to the anniversary date of the previous year's annual meeting of the company containing (i) the names of all nominees for which the Dissident intends to solicit proxies and (ii) a statement that the Dissident intends to solicit holders of shares representing at least 67 percent of the voting power entitled to vote in the election of directors. This requirement is in addition to in any notice or other requirements in a company's governing documents. A Dissident is also required to file a definitive proxy statement (at least 25 calendar days before the shareholder meeting or five calendar days after the company files its definitive proxy statement, whichever is later) and disclose in such proxy statement that it intends to solicit holders of at least 67 percent of shareholders entitled to vote.

Strategies for Navigating Increased Shareholder Activism Facilitated by the Universal Proxy Rules

In the wake of adoption of the Universal Proxy Rules, shareholder activism is likely to become increasingly prevalent, making it imperative that companies and their directors adopt strategies to respond effectively to shareholder priorities and concerns. Companies should consider the following strategies to fortify their positions in the face of increased shareholder activism:

1. **Enhanced Communication:** Establish transparent and open lines of communication with shareholders. Regular shareholder engagement can provide greater understanding of shareholder concerns and build and maintain a collaborative relationship with shareholders. A few ways to foster shareholder engagement are to conduct shareholder surveys or make a mobile application available to shareholders with current information about the company and its performance.
2. **Robust Governance Practices:** Implement governance practices aligned with the Securities Exchange Act of 1934, state securities laws, applicable securities exchange rules and current best practices. It is not only important for companies' governance practices (and corporate governance documents and policies) to be current with laws and regulations, but also to reflect a culture of accountability and responsiveness. Companies should regularly evaluate and update their corporate governance policies to ensure they align with current rules, regulations and best practices, as this will ensure legal compliance as well as providing reassurance to shareholders. In particular, companies should review their advance notice provisions in their bylaws to ascertain whether any changes are required in light of the Universal Proxy Rules.



3. Evaluate Board Composition: Evaluate board composition in relation to companies' cultural, strategic and operational goals. Companies should proactively evaluate their board composition. For example, directors with a long tenure may be targeted by activists if they are thought to have compromised independence or have failed to evolve with shareholder expectations and the companies' long-term goals.

4. Proactive Issue Identification: Proactively identify potential issues by conducting regular assessments to address concerns before they escalate into activist interventions. Some strategies for identifying issues proactively include regularly conducting audits, engaging in data analysis and regularly seeking internal and external feedback.

As the Universal Proxy Rules continue to shape the corporate governance landscape, companies must recognize the increased importance of shareholder engagement, robust corporate governance practices, board composition in relation to shareholder expectations and company objectives, and proactive issue identification. If you have questions, feel free to contact [Michele Kloeppel](#) or [Allyson Coyne](#).

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