



August 11, 2020

TO: Each Trustee,
Board of Investments

SUBJECT: BOI Meeting on August 12, 2020 – Green Folder Item

Following you will find the Green Folder item for the above mentioned meeting:

- 1) Monthly Status Report on Legislation
November Elections – Recommendation as submitted by Trustee, Wayne Moore for the Board to take Action.
- 2) Securities and Exchange Commission Comment Letter Regarding Implementation of Universal Proxy Rule (For Information Only) (Memo dated August 11, 2020)

August 9, 2020

TO: Each Trustee,
Board of Investments

FROM: Wayne Moore
Board of Investments, Trustee

FOR: Board of Investments Meeting on August 12, 2020 – Green Folder Item

Nationwide, about 24% of public sector employees are Black and Hispanic, 59% are women. More than 95% of the asset management firms managing their retirement assets and collecting fees are white owned and they control over 98% of assets under management. This is not happenstance. This has been generations in the making. If nothing changes, another generation will continue allocating almost all retirement assets to white owned management companies, limiting the ability for minorities and women, who provide most of those assets, the opportunity to participate in an industry that according to Forbes magazine has created more wealth than any other industry in recent years.

LACERA's active plan participants, Los Angeles County employees, are 60% Black and Hispanic and 60% women. They deserve to have their retirement assets benefit them and their legacy. Their savings should not be used to perpetuate a hereditary class of investment managers and their legacy. Minority and women owned investment firms need to manage more public pension fund assets, including LACERA's. This will not happen by happenstance either. There must be an intentional and persistent willingness to make opportunities available for minority and women owned investment firms to participate in our plan.

In November, Proposition 16 is on the ballot and if passed, will repeal 1996's Proposition 209. Over the past 24 years, Proposition 209 has served to entrench the status quo ante and in fact helped turn back the clock at public pension funds who were implementing minority business enterprise programs until 1996. California has almost 20% of the public pension fund assets in the country. If California pension funds required their investment managers to look more like their plan participants, we would have a major impact on the entire nation in addressing the racial wealth gap.

Without respect to the passage or failure of Proposition 16, it is time for us at LACERA to take the initiative to open up our system and make sure we are in fact diverse and inclusive.

Therefore, I move the following:

That the Los Angeles County Employee Retirement Association adopt an Investment Equity Initiative that establishes 3 year, 5 year and 10 year tactical plans for hiring investment management, advisory and service providing companies whose ownership and company demographics reflect the diversity of Los Angeles county active employees and retirees. The Initiative's outcome objectives will be to increase the number of Hispanic, African American and women owned companies managing LACERA investment assets, increase the amount of funds managed by these same companies and increase the number of Hispanic, African American and women owned companies providing advisory and other services to LACERA. The objective will consider availability and utilization rates of minority and women owned firms in addition to their performance and portfolio fit. The Initiative will comply with all local ordinances and policies, as well as State and Federal Laws. The initiative will require regular demographic reporting to the Board of Investment on investment managers, advisors and service providers. The Board will appoint an Ad-hoc committee to work directly with the staff in developing a draft Initiative for Board review within 60 days.

FOR INFORMATION ONLY

August 11, 2020

TO: Trustees
Board of Investments

FROM: Scott Zdrazil 
Senior Investment Officer

FOR: August 12, 2020 Board of Investments Meeting

SUBJECT: **SECURITIES AND EXCHANGE COMMISSION COMMENT LETTER
REGARDING IMPLEMENTATION OF UNIVERSAL PROXY RULE**

Please find attached a comment letter (**Attachment**) to the U.S. Securities and Exchange Commission (SEC) regarding enactment of the SEC's 2016 proposal to enable a "universal proxy card" in proxy contests.¹ The SEC's 2016 proposed "universal proxy" would require companies and dissidents in proxy contests to list all candidates, thereby enabling investors to select among both incumbent and dissident nominees, should an investor choose. (For example, if a dissident proposes a full board slate, an investor may think it is warranted to support some dissident nominees, but not prompt a full board turnover.) Absent a "universal card," investors must choose among one slate or the other, risking "wasting votes."

LACERA's *Corporate Governance Principles* explicitly support a universal proxy ([Section I.C.3, p.4](#)). LACERA has previously advocated for the SEC to act on its 2016 proposed rule in formal comments (including a submission to an [SEC Roundtable on Proxy Voting](#)) and collaboration with the Council of Institutional Investors. After a delay in finalizing the SEC's 2016 rule, an informal working group was formed, co-chaired by CII and Wachtell Lipton, and including proxy voting staff, corporations, and proxy solicitors to provide input on several mechanical aspects of how to operationalize a final rule. The SEC placed the finalization of the universal proxy rule on its short-term regulatory agenda,² with an expectation that the Commission may enact a final rule shortly.

The comment letter is intended to send a unified signal to the SEC to facilitate finalization of the 2016 proposal on a pivotal issue for voting proxies during proxy contests, where there are two competing visions of what direction to take a company in LACERA's portfolio. LACERA filed the comment letter in adherence to its [Corporate Governance Policy](#) procedures and consistent with its [Corporate Governance Principles](#).

Noted and Reviewed:



Jonathan Grabel
Chief Investment Officer

¹<https://www.sec.gov/rules/proposed/2016/34-79164.pdf>

²https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=73986BB1C8D8833E7C234D63D2431A704BEFB764D7F40398DEE4CDA00AE09B71BAFC48906485A4984A5D914BEF28D9B88936

The Universal Proxy Working Group

Via Email

August 6, 2020

William Hinman
Director of Corporation Finance
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Universal Proxy Cards

Dear Director Hinman:

The Universal Proxy Working Group (“UPWG”) is an informal committee of market participants who share an interest in optimizing proxy voting logistics for non-exempt solicitations in connection with contested corporate director elections. Although the informal committee has engaged in dialogue only since December 2019, many of its participants have individually followed the SEC’s important work in this area for several years. The perspectives of UPWG participants are not monolithic, but several important themes have emerged from our dialogue reaching across a substantial majority of the committee’s participants. In our capacity as the UPWG co-chairs, we are conveying the perspectives of the individual UPWG participants listed below, who generally agree with the following broad observations, which may be of interest to the ongoing important work of the Staff of the Division of Corporation Finance as well as the Commission:

- We believe the system for contested director elections should facilitate the objectives of clarity, ease of use and fairness in an orderly process. The Proposing Release¹ issued in 2016 signified an important milestone toward fulfilling these objectives by establishing that under qualifying circumstances, the registrant proxy card and the dissident proxy card each must include all nominees and present them fairly. Candidates and recommendations with respect to those nominees should be presented on the proxy card in a way that is understandable and generally consistent across both cards and contests.
- We support requiring disclosure on the universal proxy cards or in their accompanying materials (as well as in the definitive proxy statements), of the effect of:
 - voting on the universal proxy card for more candidates than available board seats;
 - voting on the universal proxy card for fewer candidates than available board seats; and
 - signing and returning an otherwise unmarked universal proxy card

¹ Universal Proxy, 81 Fed. Reg. 79,122 (SEC proposed Oct. 26, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-11-10/pdf/2016-26349.pdf> (the “Proposing Release”). We agree with the scope of the Proposing Release, which excludes investment companies registered under Section 8 of the Investment Company Act of 1940 (“1940 Act”) and Business Development Companies as defined by the 1940 Act.

- We support the Proposing Release’s presentation and formatting requirements, which advance the above objectives without compelling opposing sides to produce identical cards or co-ordinate the creation of a single universal proxy card.² We believe both of these alternative models could cause unnecessary disruption for market participants accustomed to the circulation of two competing cards. The core improvement we seek is the ability of shareholders to use any proxy card they choose to vote for any combination of board nominees they prefer.
- We acknowledge that the presentation and formatting requirements described in the Proposing Release are not necessarily exhaustive of all appropriate requirements to ensure clarity, ease of use and fairness in an orderly process, and that further requirements, *e.g.*, uniform presentation and formatting of the vote boxes beside the nominees, as well as standardized general colors for respective registrant and dissident cards,³ could be appropriate and helpful.
- While the Proposing Release centers on the universal proxy card, we would favorably view the SEC Staff having authority where necessary and appropriate to also facilitate the fair presentation of all nominees on vote instruction forms (VIFs) and electronic proxy voting platforms in the context of proxy contests.
- While the Proposing Release requires the dissident to solicit holders of shares representing a simple majority of outstanding voting power, the majority of the UPWG participants believe that requiring the solicitation of holders of two-thirds of outstanding voting power could also be workable, while commanding broader comfort that the threshold strikes an appropriate balance between providing the utility of the universal proxy system and precluding dissidents from capitalizing on the inclusion of dissident nominees on the registrant’s card without undertaking meaningful solicitation efforts.⁴ A requirement to solicit the holders of all outstanding votes would ensure that no shareholder is disenfranchised, but would not strike an appropriate balance, in the view of the majority of UPWG participants, especially taking into account the fact that dissidents generally are

² The presentation requirements in the Proposing Release to which we refer are: 1) to distinguish between registrant nominees and dissident nominees; 2) to list each nominee in alphabetical order by last name, within each group; 3) to use the same font type, style and size to present all nominees on the card; 4) to prominently disclose the maximum number of nominees for which authority to vote can be granted; 5) to prominently disclose the treatment and effect of a proxy executed that grants authority to vote for fewer nominees than a available board seats, or in a manner that does not grant authority to vote with respect to any nominees.

³ In the current system, it is our experience that there is a significant degree of gamesmanship regarding whether the company or the dissident can lay claim to the use of the white colored proxy card. This gamesmanship occurs precisely because of the confusion generated if the white proxy card (which is the color almost universally used by the company in uncontested proxy elections) is claimed by the “dissident.” Since one of the major tenets of the Proposing Release is to provide clarity and minimize confusion, removing confusion with respect to which side lays claim to the “white” proxy card would be beneficial to a fair and orderly election process.

⁴ See SEC Investor Advisory Committee Proxy Plumbing recommendation, Sept. 9, 2019, <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-plumbing.pdf> at 9, citing 66.7% as a possible threshold that could address many of the stated concerns.

not reimbursed for their proxy solicitations (regardless of whether the solicitation fails or succeeds).

- We are aware of some concerns with scenarios in which a registrant nominee chooses not to serve on the post-election board in the event of the election of one or more of the dissident's directors. The UPWG believes this issue could be resolved by first requiring disclosure in the proxy materials for each side either 1) acknowledging there is no assurance that elected nominees will serve on the board; or 2) identifying any candidate who does not intend to serve if elected with the opposing side's nominee(s), and second, how the resulting vacancy could (or would) be filled under the company's governing documents and applicable state law.

On behalf of the UPWG participants listed below, we appreciate this opportunity to share our views on this important topic.

Sincerely,



David A. Katz
Wachtell, Lipton, Rosen & Katz
Co-chair, Universal Proxy Working Group



Glenn Davis
Council of Institutional Investors
Co-chair, Universal Proxy Working Group

Chuck Callan
Broadridge

Aeisha Mastagni
California State Teachers' Retirement System

Richard Grubaugh
D.F. King & Co.

Mike McCauley, Tracy Stewart, Jacob Williams
Florida State Board of Administration

Dorothy Donohue
Investment Company Institute

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Sachin Goyal
JP Morgan

Scott Zdrazil
Los Angeles County Employees Retirement Association (LACERA)

Kyle Seeley
New York State Common Retirement Fund

Bruce Goldfarb
Okapi Partners

Gwen LaBerre
Parametric Portfolio Associates LLC

Brian L. Schorr
Triam Fund Management, L.P.

Washington State Investment Board

Steven Bochner
Wilson, Sonsini Goodrich & Rosati

Cc: Chairman Jay Clayton
Cc: Commissioner Hester M. Peirce
Cc: Commissioner Elad L. Roisman
Cc: Commissioner Allison Herren Lee