

UNIVERSALLY SPEAKING

AN INTERVIEW WITH MICHAEL VERRECHIA, MANAGING DIRECTOR OF THE M&A AND ACTIVISM ADVISORY GROUP AT MORROW SODALI.



THE UNIVERSAL PROXY CARD WILL BECOME MANDATORY ON SEPTEMBER 1, 2022 BUT IT ISN'T TOTALLY NEW. HOW HAS IT BEEN USED IN PAST CONTESTS?

The universal proxy card, of course, is not a new concept, and has been used in a few situations, including proxy contests at Canadian Pacific, EQT, and SandRidge Energy. It has also been proposed and rejected in other situations by activists and companies alike. As it currently stands, both sides would have to agree to use a universal proxy and, as we know, it's difficult to get both sides to agree on anything, so that likely explains its relative lack of use.

WHAT HAS THE REACTION BEEN FROM INVESTORS BROADLY?

Again, the concept of the universal proxy isn't new, so I think there is a focus right now on the "bells and whistles" of the rule change. I think many believe on balance that a universal proxy makes voting easier, and that is likely true, but it will be interesting to see how companies and holders feel about the universal proxy in the early days of implementation.

IS THIS A PRO-ACTIVIST OR PRO-MANAGEMENT DEVELOPMENT?

I think there are arguments to be made for both sides. On the one hand, a universal proxy creates a scenario where the company could keep more of the board intact when facing negative recommendations from proxy voting advisory firms. As it currently sits, those recommendations come on one card or the other and while institutional holders can show up and split their vote at the meeting, that doesn't happen often. This can result in the activist obtaining a number of board seats beyond what the advisory firms recommend.

On the other hand, a universal proxy allows the activist slate to reach the entire shareholder base by virtue of the fact that companies are required to distribute proxy material to ALL shareholders. Under the current setup, if an activist investor was overly cost conscious, and many are, they may decide to

stratify their campaign to reach only the top holders in the shareholder profile. We see this often in campaigns with large retail components. With the activists' nominees now included on a management ballot, the ability to vote for those nominees is now guaranteed across the entire shareholder base without the activist having to incur the cost of mailing to all shareholders. The new rules do require the activist to solicit at least 67% of the voting power.

There is also the concern that the process may be confusing to some shareholders and now having both sides on the proxy card makes it easier for a shareholder who generally supports management to check a box for say one or two dissident nominees.

DO YOU THINK IT WILL CHANGE THE TACTICAL APPROACH TO PROXY CONTESTS FOR EITHER SIDE - EITHER IN THE CURRENT SEASON OR NEXT?

While I don't see the rule change impacting the current season in a meaningful way, we expect to see situations where one side or the other proposes it. I absolutely think it changes the campaign strategy for both sides after the change goes into effect in August. Large institutional/hedge funds are sophisticated voters and should quickly understand the nuances of the ballot in front of them. That said, companies with a large retail component will likely need to provide clear instructions on voting mechanics. This message should be delivered through simple follow-up reminder mailings and phone calls to individual holders. On the activist side, I believe campaigns will become more cost efficient and it is likely to see some of the realized savings rolled back into a robust targeted follow-up campaign to the top range of holders. ●



MICHAEL VERRECHIA
M.VERRECHIA@MORROWSODALI.COM