Blogs
January 23, 2023
Public Chatter

Universal Proxy: Should You Amend Your Bylaws?

During our recent webcast — "**Proxy Season Roundtable: What You Need to Know Now**" — Allison Handy joined Proxy Analytics' Steve Pantina to discuss the potential impact of universal proxy on this proxy season. (In this **related blog,** Steve discusses some other universal proxy thoughts.) Starting at the 29:45 mark, Allison discusses whether companies should think about amending their bylaws. The following provides a summary of some of her thoughts:

The SEC's universal proxy rules don't *require* companies to take any actions to accommodate the rules. But some companies have taken action to address or reference the new rule in their advance notice bylaws.

- Some companies are amending their bylaws to provide that they won't count votes for a dissident nominee if the dissident winds up not fully complying with Rule 14a-19. Companies have made this change because Rule 14a-19 itself doesn't have a mechanism to enforce compliance by dissidents with the rule.

- Although Corp Fin issued new **CDI 139.03** last August regarding the interplay between advance notice bylaws and the universal proxy rule deadline, some companies are updating their bylaws to specify that all information required by Rule 14a-19(b) must be included in the shareholder's notice of a nomination under the company's bylaws.

Some companies have also started adopting more onerous advance notice bylaws, requiring more detailed information about the nominating shareholder. There is at least one court battle going on right now over bylaw amendments that a company made in response to a proxy fight and the outcome of that case could potentially implicate the limits of what companies can require in an advance notice bylaw. Companies should keep an eye out for developments on this front, even if they are not considering any bylaw amendments this year.

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