

SUPPORTING STATEMENT FOR UNIVERSAL PROXY AMENDMENTS

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

In Release No. 34-93596,¹ the Commission adopted amendments to require the use of universal proxies in all non-exempt solicitations in connection with contested elections of directors other than those involving registered investment companies and business development companies. The amendments require the use of proxy cards that include the names of both registrant and dissident nominees allowing shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting.

The Commission further adopted amendments to the form of proxy and proxy statement disclosure requirements to specify clearly the applicable voting options and voting standards in all director elections.

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles of the collections of information impacted by the amendments are:

- “Regulation 14A (Commission Rules 14a-1 through 14a-21 and Schedule 14A)” (OMB Control No. 3235-0059); and
- “Rule 20a-1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations” (OMB Control No. 3235-0158).²

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The Commission amended the proxy rules as they apply to operating companies to revise the consent required of a bona fide nominee, eliminate the short slate rule and add Rule 14a-19 to establish new procedures for the solicitation of proxies, the preparation and use of proxy cards and the dissemination of information about all director nominees in contested elections. The purpose of the amendments is to implement the use of a universal proxy card to allow shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting.

The Commission also adopted amendments to the proxy rules relating to all director elections to: specify that the proxy card must include an “against” voting option when

¹ Universal Proxy, Release No. 34-93596 (Nov. 17, 2021) [86 FR 68330] (Dec. 1, 2021) (the “Adopting Release”).

² The Commission’s Division of Investment Management will be making the Paperwork Reduction Act submission for Rule 20a-1.

applicable state law gives effect to a vote “against”; require proxy cards to give shareholders the ability to “abstain” in an election where a majority voting standard is in effect; and mandate disclosure about the effect of a “withhold” vote in an election. The purpose of these amendments is to better enable soliciting parties to properly seek and authorize the appropriate voting option for shareholders.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the amendments will be set forth in Regulation 14A and Rule 20a-1. The information required by these rules is filed electronically with the Commission using the Commission’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that conflict with or substantially duplicate the final rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The amendments will affect some companies that are small entities that have a class of securities that are registered under Section 12 of the Exchange Act. The Commission performed a Final Regulatory Flexibility Act Analysis and estimated that there were approximately 660 issuers, other than investment companies, that may be considered small entities.

The Commission considered a variety of alternatives to achieve our regulatory objective to allow a shareholder voting by proxy to choose among director nominees in an election contest in a manner that reflects as closely as possible the choice that could be made by voting in person at a shareholder meeting. The Commission did not propose alternative approaches in this rulemaking because we do not believe they meet the regulatory objective as well.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Regulation 14A sets forth the disclosure requirements for proxy statements to help investors make informed investment decisions. Rule 20a-1 applies those rules to investment companies. Failure to conduct the collection of the information required by the amendments would frustrate the statutory intent of Section 14 of the Exchange Act because shareholders would have less information on which to base voting decisions.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens.³ Comments on the Commission’s releases are generally received from registrants, investors, and other market participants. Comments received on the Proposing Release can be found here: <https://www.sec.gov/comments/s7-24-16/s72416.htm>. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. The Commission’s solicitation of public comments included estimating and requesting public comments on updated burden estimates for all information collections under this OMB control number (i.e., both changes associated with the rulemaking and other burden updates). The Commission considered all comments received.

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift to respondents.

10. CONFIDENTIALITY

All documents submitted to the Commission are available to the public.

11. SENSITIVE QUESTIONS

No information of a sensitive nature, including social security numbers, will be required under these collections of information. The information collections collect basic Personally Identifiable Information (PII) that may include name and job title. However, the agency has determined that the information collections do not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on February 5, 2020, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The paperwork burden estimates associated with the amendments include the burdens attributable to collecting, preparing, reviewing and retaining records.

Regulation 14A and Rule 20a-1

The Commission amended the proxy rules as they apply to operating companies to revise the consent required of a bona fide nominee, eliminate the short slate rule and

³ [Universal Proxy](#), Release No. 34-79164 (October 26, 2016) [81 F.R. 79122] (Nov. 10, 2016) (the “Proposing Release”).

add Rule 14a-19 to establish new procedures for the solicitation of proxies, the preparation and use of proxy cards and the dissemination of information about all director nominees in contested elections.⁴ The amendments will affect the collection of information requirements of soliciting parties by requiring the use of a universal proxy card in all non-exempt solicitations in connection with contested elections, prescribing requirements for universal proxy cards, and requiring the soliciting parties to add a reference to the other party's proxy statement for information about the other party's nominees and explain that shareholders can access the other party's proxy statement on the Commission's website. The amendments will additionally require dissidents in such election contests to provide a notice of intent to solicit and a list of their nominees to the registrant, require registrants to provide notice of the names of nominees to the dissident, and eliminate the ability of dissidents to round out their slate with registrant nominees through use of the short slate rule. The amendments will additionally prescribe filing deadlines for a dissident's definitive proxy statement and require dissidents to solicit at least 67% of the voting power of shares entitled to vote on the election of directors; however, we do not believe that these requirements will meaningfully impact the reporting and cost burden associated with the collection of information.⁵ We believe that the amendments regarding the use of a universal proxy card, required notices and related disclosure will result in only a small amount of additional required disclosure and the addition of only a limited amount of material (the names of duly nominated director candidates for which the soliciting party has complied with Rule 14a-19 on proxy cards). The application of these amendments also will be limited to contested elections.

The Commission also adopted amendments to the proxy rules relating to all director elections to: specify that the proxy card must include an "against" voting option when applicable state law gives effect to a vote "against"; require proxy cards to give shareholders the ability to "abstain" in an election where a majority voting standard is in effect; and mandate disclosure about the effect of a "withhold" vote in an election.

⁴ The Commission did not amend the proxy rules for investment companies and business development companies.

⁵ The Commission's current proxy rules do not prescribe a minimum solicitation requirement for either registrants or dissidents; however, customary practice has been for soliciting parties to solicit more than 67% of the voting power of shares entitled to vote on the election of directors because either, in the case of a registrant, it wishes to meet notice, informational and quorum requirements for the annual meeting, or, in the case of a dissident, such solicitation is necessary in order to successfully wage a proxy contest. Based on staff analysis of the industry data provided by a proxy services provider for 31 proxy contests between July 1, 2018 and June 30, 2019, less than 67% of the voting power was solicited by a dissident in not a single proxy contest in that sample. Of the 35 proxy contests between June 30, 2015 and April 15, 2016 analyzed in the Proposing Release (see Section IV.B.2.b of the Proposing Release), only 2 dissidents solicited less than 67% of the voting power. In those instances, we estimate that the amendments would have resulted in average incremental solicitation expenses (exclusive of printing costs) to the dissident of approximately \$5,400 if the least expensive approach to soliciting through an intermediary had been used to solicit the required additional number of shareholders. For PRA purposes, we therefore estimate that there would be one contest annually that would not have otherwise solicited 67% and thus would incur additional solicitation costs of \$5,400, which amount we add to the estimated reporting and cost burden associated with Regulation 14A.

The amendments requiring the appropriate use of an “against,” “abstain” or “withhold” voting option should better enable soliciting parties to properly seek and authorize the appropriate voting option for shareholders. We believe that the additional disclosure and revisions to the proxy card relating to these changes will similarly result in only a small incremental increase in the required disclosure; however, the changes will apply to proxy materials in all director elections, not just contested elections.

The Commission derived the new burden hour and cost estimates by estimating the total amount of time it will take to prepare and review the required disclosures called for by the adopted rules. This estimate represents the average burden for all soliciting parties, both large and small. In deriving the estimates, we recognize that the burdens will likely vary among soliciting parties, some soliciting parties will experience costs in excess of this average in the first year of compliance with the amendments and some parties may experience less than the average costs.

As discussed in the Adopting Release, it is unclear whether the amendments will result in an increase or decrease in the number of election contests, and the Commission therefore estimates no change in the number of proxy statement filings as a result of the amendments. The Commission estimates that the average incremental burden for a registrant to prepare a universal proxy card in a contested election and include the required disclosure will be two hours. The Commission similarly estimates that the average incremental burden for a dissident to prepare a universal proxy card in a contested election and include the required disclosure will be two hours. Additionally, the average incremental burden for a dissident and registrant to prepare the notice to the opposing party containing the names of its nominees in a contested election is estimated to be approximately one hour. Thus, the estimate for the total incremental burden for Regulation 14A will increase by three hours per election contest for registrants and three hours per election contest for other soliciting parties.⁶ For purposes of the PRA, the Commission estimates there will be 25 annual election contests per year,⁷ resulting in 150 additional total incremental burden hours (6 hours x 25 election contests) under Regulation 14A as a result of adopted Rule 14a-19 and the related amendments.

The Commission estimates that the additional disclosure and changes to the proxy card relating to the appropriate use of “against,” “abstain” or “withhold” voting options in proxy materials for all director elections will be considerably less than one hour for each proxy statement and card relating to an election of directors. Unlike the amendments relating to election contests, these amendments will apply to all director elections, including director elections for registered investment companies and business development companies. The disclosure and changes to the proxy card will require registrants to clarify existing standards, and many of the descriptions and standards, once

⁶ There may be a range of burdens by soliciting parties as they determine exactly how to present the proxy card and the language of the required disclosure; however, the Commission estimates the burdens described above as the average burden for soliciting parties.

⁷ The Commission does not estimate that there will be additional election contests as a result of the amendments. The estimate of approximately 25 election contests per year is based on the average of actual proxy contests for elections of directors in calendar years 2017-2020.

revised, are not likely to require significant revision from year to year. We estimate that these changes will result in an average of 10 minutes of additional burden per response.⁸ For purposes of the PRA, we estimate the changes will result in 1,062 hours of additional total incremental burden under Regulation 14A (10 minutes x 6,369 filings) and 222 hours of total incremental burden under Rule 20a-1 (10 minutes x 1,333 filings).

These estimates include the time and cost of preparing disclosure that has been appropriately reviewed, including, as applicable, by management, in-house counsel, outside counsel and members of the board of directors. This burden will be added to the current burden for Regulation 14A and Rule 20a-1, as applicable. For proxy statements under Regulation 14A, we estimate that 75 percent of the burden of preparation is carried internally and that 25 percent of the burden of preparation is carried by outside professionals retained at an average cost of \$400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried internally is reflected in hours. We estimate a similar allocation between internal burden hours and outside professional costs with respect to the PRA burden for Rule 20a-1.

As a result of the estimates discussed above, we estimate for purposes of the PRA that the total incremental burden on all soliciting parties of the amendments under Regulation 14A will be 909 hours for internal time (1,212 total incremental burden hours x 75 percent) and \$121,200 (1,212 total incremental burden hours x 25 percent x \$400), plus \$5,400 in professional costs due to the additional solicitation burden, for the services of outside professionals. We further estimate for purposes of the PRA that the total incremental burden on all soliciting parties of the amendments under Rule 20a-1 will be 166.5 hours for internal time (222 total incremental burden hours x 75 percent) and \$22,200 (222 total incremental burden hours x 25 percent x \$400) for the services of outside professionals.

A summary of the estimated changes is included in the table below.

Summary of the changes to annual compliance in Collection of Information

| | Current Annual Responses (A) | Estimated Annual Responses (B) | Current Burden Hours (C) | Estimated Increase in Burden Hours (D) | Estimated Total Burden Hours (E) =C+D | Current Professional Costs (F) | Estimated Increase in Professional Costs (G) | Estimated Total Professional Costs =F+G |
|----------------|------------------------------|--------------------------------|--------------------------|--|--|--------------------------------|--|---|
| Regulation 14A | 6,369 | 6,369 | 777,590 | 1,212 | 778,802 | \$103,678,712 | \$126,600 | \$103,805,312 |
| Rule 20a-1 | 1,333 | 1,333 | 113,305 | 222 | 113,527 | \$39,990,000 | \$22,200 | \$40,012,200 |

⁸ We estimate that the incremental burden for the additional disclosure and changes to the proxy card will increase by 20 minutes in the first year and then be reduced to five minutes in years two and three, resulting in a three-year average of an increased 10-minute burden per response.

14. COSTS TO FEDERAL GOVERNMENT

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$119,447,840 in fiscal year 2020, based on the Commission's computation of the value of staff time devoted to this activity and related overhead for the Division of Corporation Finance.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 12 and 13 above, the amendments in the Adopting Release (Release No. 34-93596) implement changes to permit the use of a universal proxy card to allow shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting.

The changes in burden of Regulation 14A relate to the incremental burden for a registrant to prepare a universal proxy card in a contested election and include the required disclosure and the incremental burden for a dissident to prepare a universal proxy card in a contested election and include the required disclosure. Additionally, the changes in burden of Regulation 14A include the incremental burden for a dissident and registrant to prepare the notice to the opposing party containing the names of its nominees in a contested election. The Commission adopted these changes to implement the use of a universal proxy card in non-exempt solicitations in connection with contested elections.

Additionally, the Commission adopted changes to better enable soliciting parties to properly seek and authorize the appropriate voting option for shareholders. Unlike the amendments relating to election contests, these amendments will apply to all director elections, including director elections for registered investment companies and business development companies. The disclosure and changes to the proxy card require clarification of the existing standards, and many of the descriptions and standards, once revised, are not likely to require significant revision from year to year. The changes in burden of Regulation 14A and Rule 20a-1 reflect the incremental burden from preparing the disclosure relating to these amendments.

The changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all those information collection burden estimates for this OMB control number.

Summary of the changes to annual compliance in Collection of Information

| | Current Annual Responses (A) | Estimated Annual Responses (B) | Current Burden Hours (C) | Estimated Increase in Burden Hours (D) | Estimated Total Burden Hours (E) =C+D | Current Professional Costs (F) | Estimated Increase in Professional Costs (G) | Estimated Total Professional Costs =F+G |
|----------------|------------------------------|--------------------------------|--------------------------|--|--|--------------------------------|--|---|
| Regulation 14A | 6,369 | 6,369 | 777,590 | 1,212 | 778,802 | \$103,678,712 | \$126,600 | \$103,805,312 |
| Rule 20a-1 | 1,333 | 1,333 | 113,305 | 222 | 113,527 | \$39,990,000 | \$22,200 | \$40,012,200 |

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application’s scheduled version release dates. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions to certification for the Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.

Regulation 14A Short Statement

The amendments in Release 34-93596 revise the consent required of a bona fide nominee, eliminate the short slate rule and establish new procedures for the solicitation of proxies, the preparation and use of proxy cards and the dissemination of information about all director nominees in contested elections to implement the use of a universal proxy card to allow shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting. Additionally, the amendments specify certain required voting options and mandate disclosure about the effect of certain votes in an election to better enable soliciting parties to properly seek and authorize the appropriate voting option for shareholders. We anticipate that the amendments will result in a small increase in the required disclosure and the related burdens and costs for the registrants to prepare and review the collections of information. For purposes of the PRA, we estimate that the amendments to Regulation 14A will result in a net increase of 1,212 burden hours and a net increase in the cost burden of \$126,600 for the services of outside professionals. The changes in burden reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all those information collection burden estimates for this OMB control number.