UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron
General President

January 9, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F St Street, NE
Washington, DC 20549-1090

Re: Comments on SEC Release No. 34-79164 -- Universal Proxy (File No. S7-24-16)

Dear Mr. Fields:

The United Brotherhood of Carpenters and Joiners of America ("Carpenters"),[1] respectfully submits its comments on the proposed amendments to the federal proxy rules proposed by the U.S. Securities and Exchange Commission ("Commission") on October 26, 2016, in SEC Release No. 34-79164 ("Universal Proxy Release" or "Release"). Over the past decade, the Carpenters pension funds have actively advocated to enhance the voting rights of shareholders through the establishment of a majority vote standard in corporate director elections.[2] Our majority vote advocacy is motivated by the desire to transform the common uncontested director election into an effective and efficient board accountability mechanism; an accountability mechanism that is well-suited for advancing a sustainable long-term corporate value growth perspective and board strategic initiatives that advance that corporate purpose. The corporate director election form of proxy (or proxy card) has not kept pace with the transformation of the election vote standard and intensifying ownership activism. This failing threatens to undermine shareholders most important right, the right to elect corporate directors. The Commission's rulemaking proposal is a serious and thoughtful effort to address shortcomings in election proxies. While the major focus of the proposed rulemaking is the form of proxy to be used in a contested director

[1] The United Brotherhood of Carpenters and Joiners of America is an international union established in 1881 whose membership includes over 500,000 working men and women in the United States and Canada. Carpenter members participate in one of the seventy separate Taft-Hartley pension funds in the United States and twenty jointly-trusteed pension funds in Canada. The Carpenter pension funds, with total assets of approximately $50 billion, actively monitor the financial and corporate governance performance of their portfolio companies, as members' retirement security is dependent in large measure on the effective and efficient operation of the financial markets and the rules and regulations that govern market participants.
[2] The Carpenter pension funds have submitted 560 majority vote shareholder proposals and engaged hundreds of corporations in constructive dialogue on the topic of majority voting in director elections.

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election, the universal proxy, we very much appreciate the Commission's efforts to address serious deficiencies in the form of proxy used in uncontested director elections. Given our institutional interest in strengthening voting rights in uncontested director elections, our comments focus on the Commission's proposed "Additional Revisions," that is, those aspects of the Release that relate to the vote options on the proxies used in uncontested director elections and a related proxy statement disclosure enhancement related to all director elections.

Proposed Universal Proxy

The Commission's proposal to mandate the use of a "universal proxy" in contested director elections is in keeping with its obligation to ensure that the proxy process functions "as nearly as possible, as a replacement for an actual in-person meeting of shareholders." The proposed universal proxy is a thoughtful and comprehensive effort that presents reforms that would afford shareholders a greater opportunity to more effectively exercise their voting rights in contested director elections. As regards the specific aspects of the universal proxy presented in the Release, the Carpenters associates itself with the comments submitted by the Council of Institutional Investors ("CII") on December 28, 2016, on the issue of the universal proxy.[3] The CII has played the leading role in advancing the Commission's consideration of the universal proxy, with its overarching goal always being to facilitate shareholder voting rights. The CII's responsive comments on the Release are thorough and thoughtful, and outline a formulation of a universal proxy that seeks not to change transaction outcomes, but to advance all shareholders voting rights.

Additional Revisions: Director Election Voting Standards Disclosure and Voting Options

The Commission's proposed universal proxy is designed for use in the relatively few instances of contested director elections that occur in the market each year.[4] Typically, over 99% of the director elections that occur each years in the U.S. market at publicly-traded companies are uncontested director elections, that is, the number of director nominees seeking election in these elections is the same as the number of available board seats. These director elections are conducted under either a plurality vote standard or a majority vote standard. Historically, uncontested director elections were conducted almost

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[3] CII Universal Proxy Rulemaking Petition to the U.S. Securities and Exchange Commission (Jan. 8, 2014). http://www.cii.org/files/issues_and_advocacy/correspondence/2014/01_08_14_CII_letter_to_sec_petition%20_for_rulemaking.pdf.

[4] Hirst, Scott, Universal Proxies (August 24, 2016). Available at SSRN: https://ssrn.com/abstract=2805136 or http://dx.doi. Org/10.2139/ssrn.2805136. Uncontested director elections comprise over 99% of the corporate board elections held each year, with 108 proxy contests voted on in the years 2008 to 2015.

exclusively under a plurality vote standard, but over the past decade the market has moved increasing to a majority vote standard.[5] The market change to a majority vote standard in director elections has enhanced the accountability value of uncontested director elections. Unfortunately, while the election vote standard has undergone change, the decades-old form of proxy used in uncontested elections with either the new majority vote standard or the traditional plurality standard has failed to keep pace with the vote standard reforms. The result is a troubling level of confusion about the effects of votes on director election outcomes, specifically the effect of the so-called "Withhold" vote in plurality vote elections. The Commission's Release proposes two reforms that update the form of proxy used in uncontested elections with a majority vote standard, but it falls short with regards to the form of proxy in uncontested elections with a plurality vote standard.

Request for Comment 61: *We are proposing to amend Rule 14a-4(b) to require the form of proxy for a director election governed by a majority voting standard to include a means for shareholders to vote "against" each nominee and a means for shareholders to "abstain" from voting in lieu of providing a means to "withhold authority to vote." Should we eliminate the "withhold" voting option under a majority voting standard for director elections, as proposed? Should we eliminate the "withhold" voting option for contested elections subject to proposed Rule 14a-9 (i.e., where universal proxies are required)? Why or why not? If we do not adopt a mandatory system for universal proxies, as proposed, should we prohibit the "withhold" voting option for contested elections? Why or why not?*

The Commission's Release proposes two form of proxy amendments that relate only to the form of proxy used in a majority vote uncontested director election. The first proposed amendment to Rule 14a-4(b)(2) requires the inclusion of an "against" vote option on a form of proxy used in the election of directors with a majority vote standard (i.e., "where there is a legal effect to such a vote"). The second proposed amendment requires that the same majority vote election proxy card also include an "abstain" option, again in lieu of a "withhold authority to vote" direction. These two changes address a level of confusion in the market among registered companies concerning the appropriate vote options on a majority vote proxy card resulting from the ambiguous language of Instruction 2 of Rule 14a-4(b)(2).[6] These Rule 14a-4(b)(2) amendments would clearly establish the proper vote options on a majority vote form of proxy to be "For," "Against," and "Abstain."

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[5] At present, 92.6% of the companies included in the S&P 500 Index of companies have adopted a majority vote standard for its uncontested elections, retaining a plurality vote standard for contested elections.

[6] Instruction 2 of Rule 14a-4(b)(2) states: If applicable state law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the registrant should provide a similar means for security holders to vote against each nominee.

The Commission's proposed form of proxy for director elections governed by a majority vote standard provides for the proper proxy card vote options. Specifically, when an uncontested director election is conducted under a majority vote standard, shareholders should be afforded a "For" vote option, an "Against" vote option, and an "Abstain" option with regard to each nominee. In such elections, the "Against" and "Against" votes have a legal effect on the election outcome, as director nominees that receive more "Against" votes than the level of "For" votes required by the specific majority vote standard applicable will not be elected to the board. An "Abstain" option is necessary on the proxy to afford a security holder to abstain from voting. The language of Instruction 2 to Rule 14a-4(b)(2), which was included by the Commission's 1979 rulemaking to indicate that an "against" vote would be in order when a majority vote standard was used, is the source of confusion on this issue. The plurality vote standard was the prevalent vote standard when the Commission inserted Instruction 2 into Rule 14a-4(b) to address those circumstances an election was conducted with a majority vote standard. The language of Instruction 2 is particularly problematic in today's majority vote environment in which the "Against" vote option is understood to be the appropriate opposition vote. We suggest in a revised Rule 14a-4(b)(2) that Instruction 2 be eliminated entirely.

Should the Commission not issue a final rule to adopt a mandatory system of universal proxies, the "Withhold" vote option should nevertheless be prohibited from use on the proxies used by any party to an election contest. It is our position that the "Withhold" vote be prohibited from all proxy forms, those used in election contests as well as those used in uncontested elections.

While we support the updating of the majority vote form of proxy that eliminates a "Withhold" vote option, we caution that the proposed language of the new Rule 14a-4(b)(4) perpetuates the ambiguities associated with the Rule. The Commission's proposed text to amend Rule 14a-4(b) could potentially create a greater degree of confusion concerning the presentation of the appropriate proxy card vote options in a given election. The proposed new language to Rule 14a-4 (Requirements as to proxy) reads in part as follows:

> (4) When applicable state law gives legal effect to votes cast against a nominee, then in lieu of providing a means for security holders to withhold authority to vote, the form of proxy shall provide a means for security holders to vote against each nominee and a means for security holders to abstain from voting. When applicable state law does not give legal effect to votes cast against a nominee, such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

The language of the new proposed rule adopts the wording of Instruction 2 of the Rule 14a-4(b)(2) that was adopted in 1979 to distinguish when particular vote options should be

included on a form of proxy. The reference to "applicable state law" was then and is now an inaccurate way to distinguish which director election vote options should be included on a proxy card. The General Corporation Law of Delaware (DEL. CODE ANN. Tit. 8, section 101 et seq. ("DGCL"))and related case law, and the Model Business Corporation Act ("Model Act") are the statutes under which most corporations are incorporated and both have plurality vote default provisions, which set the plurality vote standard as the default standard in director elections. These default provisions allow for the adoption of a majority vote standard in company governance documents by a vote of the board and/or shareholders. The DGCL and the Model Act give "legal effect" to the votes cast in majority vote and plurality vote elections. A more straightforward version of section (4) would read as follows:

> (4) When an election is conducted under a majority vote standard, the form of proxy shall provide a means for security holders to vote "for" or "against" each nominee, or to "abstain" from voting. When an election is conducted under a plurality vote standard, the form of proxy shall provide a means for security holders to vote "for" each nominee, or to "abstain" from voting. The form of proxy shall clearly provide any of the following means for security holders to vote for each nominee:

The second issue addressed in the "Additional Revisions" section of the Release relates to the "Withhold" vote option and misunderstandings by registrants and security holders about the legal effects of the vote option. The Commission proposes an amendment of Item 21 of Schedule 14A to expressly require the disclosure of the effect of a "withhold" vote on an election, and further solicits comment on whether to eliminate the "withhold" option on proxy cards and "replace it with an 'abstain' option so that shareholders are aware such votes do not legally effect the outcome of the election." The proposed enhanced disclosure related to the "withhold vote" would be a constructive reform and one which we support. However, it is our position that only the renaming of the "withhold" vote option as an "abstain" vote option in all director election proxies, including the proposed universal proxy, will provide shareholders with the appropriate vote options in all elections contexts and eliminate misunderstandings concerning the legal effects of votes in those elections.

Request for Comment 62: *Some commentators have expressed concerns that shareholders may not understand that a "withhold" vote has no legal effect under a plurality voting standard. Should the Commission replace the "withhold" voting option under a plurality voting standard with "abstain?" Do parties view an "abstention" differently than a "withhold" vote? Is there any relevant legal effect under state law of an abstention as compared to a vote withholding proxy authority when directors are elected by a plurality vote? Would there be other consequences under state law or a registrant's governing documents if we were to implement such a change (e.g., would this change effect quorum requirements)?*

The Commission should replace the "withhold" voting option with an "abstain" on proxy cards used in plurality vote elections, whether contested or uncontested. It is instructive to examine the origin of what is commonly referred to as the "Withhold" vote. The present version of Rule 14a-4(b)(2) was largely established by a Commission rulemaking in 1979 that followed two years of public hearings.[7] The Commission's 1979 proposed rulemaking addressed concerns that shareholder voting in director elections had become "virtually pro forma."[8] The "pro forma" nature of the voting was due to the combination of the prevalent plurality vote standard and the preponderance of "uncontested" director elections. In uncontested director elections, a plurality vote standard meant that the election of company director nominees was virtually assured; a single "For" vote was sufficient to elect a slate of nominees, as the only other vote alternative was to abstain. The Commission's rulemaking made two important changes to the form of proxy to provide for "more meaningful participation in the director selection process:" (1) The name of each director nominee was required to be listed individually to allow shareholders to vote separately on each nominee, ending the common practice of slate voting, and (2) the "withhold authority to vote" option on the form of proxy was expanded to allow shareholders to withhold voting authority on individual director nominees.

Interestingly, the Commission had proposed that the new opposition vote in a plurality vote election be called an "against" vote. In a footnote in the proposed rulemaking, the Commission addressed the issue of the legal effect of the proposed vote stating:

> The Commission is aware that, generally, directors are elected by a plurality of votes cast and, therefore, a vote "against" nominees for election as directors is treated by corporations as an abstention from voting. While proposed Rule 14a-4(b)(2), if adopted, would not change state law in this regard, it would nevertheless permit shareholders to express their opposition to candidates more clearly than is provided under the current rules...

In acknowledging commentators' concerns about the use of the proposed "against" vote, the Commission "substituted" the words "withhold authority to vote" for the word "against" in the final rule and stated:

> A number of legal commentators questioned the treatment of an "against" vote under state law, most arguing that it normally would have no effect in an election. They also expressed the concern that shareholders might be misled into thinking that their "against" votes should have an effect when, as a matter of substantive law, such is not the case since such votes are treated simply as abstentions.

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[7] Securities Exchange Act Release 34-16356 (November 21, 1979), 44FR 68764 (November 29, 1979). The Commission's actions transformed the general "withhold authority to vote" direction to the proxy holder established in 1966 into a "withhold authority to vote" direction to the proxy holder specific to individual nominees.

[8] Securities Exchange Act Release 34-16104 (August 13, 1979), 44 FR 48938 (August 20, 1979).

The "Withhold" vote option created by the Commission in 1979 that could be "cast" with regards to individual board nominees was understood to be a symbolic means for shareholders to express their opposition to a nominee or slate of nominees in a plurality vote election. The Commission lacked authority to prescribe the applicable vote standard in director elections and it clearly understood that the "withhold" vote was an abstention, but it nevertheless revised the proxy form to provide shareholders a means to express their opposition, albeit symbolic opposition, to director nominees. In a director election environment in which the plurality vote was prevalent, the new vote option provided shareholders a communicative or symbolic "vote" to express their opposition to director nominees. It is past time for the Commission to act to update the corporate proxy form used in director elections to keep pace with market changes in the election standard. The single most effective reform in that regard would be to replace the "Withhold" vote option with an "Abstain."

As to whether market participants view an abstention differently than a "Withhold" vote, it is fair to say that many market participants and observers appear to believe that a "Withhold" is something different, that is, somehow more significant, than an abstention. It is our belief that misperceptions concerning the "Withhold" vote began with the Commission's 1979 rulemaking, and were exacerbated by the broad adoption of the majority vote standard. The market's transition from plurality voting to majority voting has resulted in considerable confusion among shareholders, corporations, academics, and proxy advisory firms concerning the "Withhold" vote at companies with a plurality vote standard. Vote standard disclosure narratives in corporate proxy materials are routinely inaccurate and misleading; Institutional Shareholder Services ("ISS"), the leading proxy advisory firm that exercises considerable market voting influence, conflates the Against and Withhold Vote options in its director election voting guidelines; and director election studies by respected corporate governance entities and academics frequently present inaccurate descriptions of election vote standards and election outcomes.[9] The commonality in all these examples of vote effect inaccuracies appears to be the belief that the "Withhold" vote has some legal consequence, or at least a practical consequence with

[9] An article in *Forbes* entitled "Public Companies' Unelected Directors," is a recent example. The article and associated study erroneously use the term "unelected directors" to describe directors legally elected under a plurality vote standard. Director nominees under a plurality vote standard are elected with a single "for" vote and receive 100% of the votes "cast" in these elections, as "withhold" votes or abstentions have no legal effect on the vote outcome and are not considered votes cast. The article and study express the concerns and frustrations of many shareholders about directors that continue on boards after strong showings of shareholder opposition. http://www.forbes.com/sites/realspin/2016/12/21/public-companies-unelected-directors/#7a8112641925

the advent of director resignation polices,[10] that an abstention doesn't have. The paramount concern is that this confusion concerning vote option effects and questions concerning vote outcomes will undermine the integrity of the director election process.

Presently, under state corporate law and corporate governance documents, abstentions and "Withhold" votes count as present in determining a quorum, so replacing the "Withhold" vote option with an "Abstain" would not have an effect on a registrant's ability to achieve a quorum for a meeting. Further, there would be no relevant effect under state law of an abstention as compared to a "vote" withholding proxy authority under a director election with a plurality vote standard. An election vote standard sets the level of votes a director nominee must receive in order to be elected to the board of directors. There are two and only two different vote standards that can be used in director elections: a plurality vote standard and a majority vote standard.[11] Each of these standards can be used in either an "uncontested" director election or a "contested" election.[12] Under a plurality vote standard, the director nominees receiving the greatest number of "For" votes corresponding to the number of open board seats win election. Thus, in an uncontested director election, each nominee will be elected with a single "For" vote. In a contested director election (i.e., more nominees than available board seats) with a plurality vote standard, those nominees with the highest level of "For" votes corresponding to the number of seats available would be elected. In each of these plurality vote elections, only the "For" votes have legal effect in determining whether a nominee is elected. The "withhold" vote option on plurality vote proxy cards has no legal effect on whether or not a nominee is elected.

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[10] Director resignation policies generally require directors to tender their resignations following an election under a majority vote standard in which a director is not elected but remains as a "holdover" director or following an election with a plurality vote standard in which an elected director receives a majority of "withhold" votes. These policies are generally placed in a company's governance guidelines.

[11] A "plurality-plus standard" is not a separate and distinct vote standard, but simply a plurality vote standard election combined with a post-election director resignation policy that a company typically establishes in their governance policies. A director resignation policy can give the "Withhold" vote a practical effect on an election outcome, because it triggers a resignation tender, but it has no legal effect on the election outcome. Companies using a majority vote standard also generally adopt a director resignation policy in conjunction with the vote standard in order to address the status of an incumbent director who fails to receive the requisite number of votes under a majority vote standard, but continues to serve on the board as a "holdover" director until such director's successor is elected and qualified or until such director's earlier resignation or removal. (See DGCL Section 141(b) and the Model Act Section 8.05(e)). The adoption of the director resignation policy does not change the underlying vote standard, it remains either a plurality or majority vote standard.

[12] While a majority vote standard can be used in a contested director election, such a combination may produce a "failed election," an outcome in which no nominee is elected or re-elected because each nominee fails to receive the requisite majority vote, and the incumbent directors standing for election remain as "holdover" directors under state law even though they may have received fewer "For" votes than the non-incumbent nominees.

Under a majority vote standard, director nominees are elected only if they receive the level of majority vote specified in the standard. Examples of different levels of required votes under a majority vote standard, include a majority of votes cast (For Votes/Against Votes), a majority of votes present and eligible to vote at the meeting (For Votes/Against Votes + Abstentions), and a majority of outstanding shares (For Votes/# of Outstanding Shares). To date, most companies with a majority vote standard have adopted a "majority of votes cast" criteria to determine when a nominee is elected in an uncontested election. More demanding levels of support, such as "a majority of the shares present and eligible to vote at a meeting of shareholders" or a "majority of the outstanding shares" are rarely used. In an uncontested director election, only those nominees that receive the required level of majority votes are elected. As noted above, a majority vote standard is not well-suited to a contested director election because of the possible "failed election" outcome. Under any version of a majority vote standard "For" votes and "Against" votes have a legal effect on determining whether or not a nominee is elected, while an "Abstain" vote may have an effect depending on the level of majority needed under the standard.[13] The only minor change that might be required in response to a Commission decision to replace the "Withhold" vote option with an "Abstain" option on a plurality vote proxy would be at a company that had placed a director resignation requirement in its bylaws. The company could eliminate the director resignation bylaw or adapt it to provide that the resignation obligation is triggered by a majority of "abstain" votes received.[14]

Request for Comment 63: *We are proposing to delete the phrase "the method by which votes will be counted" from Item 21 of Schedule 14A. Is the language needed for a specific purpose or scenario that is not covered by the proposed amendment to Item 21(b)? Is there any other reason to retain it?*

It is our position that security holders would be well-served by the Commission retaining the phrase "the method by which votes will be counted" in a revised Item 21 of Schedule 14A. In the election of directors, it is particularly important that security holders understand both the effect of each vote option on the form of proxy in determining whether nominees are elected, as well as how those votes will be counted in determining an election outcome. In both plurality vote elections, with "Withhold" votes or abstentions, and majority vote elections that may involve standards with various levels of "for" votes needed for election, it is important the security holders understand the legal effect of each vote option and how they will be counted under the applicable vote standard.

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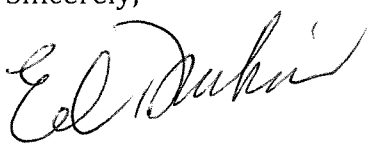
[13] For instance, when the majority standard is a majority of the votes cast, and abstention would have no effect on determining who is elected, while under a majority of shares present and eligible to vote standard, an abstention would have the effect of an against vote.

[14] An abstention is not a vote "cast," but a company would be able to quantify the number of abstentions received and could base its director resignation policy on a majority of abstentions (i.e., a nominee receives more "abstain" votes than "for" votes).

The Commission's rulemaking is an opportunity to modernize and simplify the form of proxy used in uncontested director elections, by setting out in clear terms the appropriate vote options for each of the two director election vote standards established by applicable state corporate law and/or a registrant's corporate governance documents. We commend the Commission and the Staff for its work in preparing the Universal Proxy Release. We particularly appreciate the inclusion of important form of proxy vote option issues beyond those raised by the proposed universal proxy. If you have any questions concerning our comments, please do not hesitate to contact me at (202) 546-6206 x 221or at edurkin@carpenters.org.

Sincerely,



Edward J. Durkin
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