

Potential Bylaw Amendments in Light of Universal Proxy Rules

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Effective for all contested director elections after August 31, 2022, public companies and stockholder proponents must use universal proxy cards that include all director nominees. For further information regarding the new universal proxy rule and contested director elections, please see our frequently asked questions available [here](#).

Public companies should review their bylaws in light of the SEC's new universal proxy rule and consider whether amendments to their stockholder proposal advance notice procedures are appropriate. Potential amendments that companies may consider generally fall within a few categories:

- **Implementation:** amendments that seek to implement Rule 14a-19, including by requiring that a stockholder proponent comply with Rule 14a-19 and certify compliance;
- **Enhancement:** amendments that expand the advance notice bylaw to provide the company with more time and information to prepare for a contested election or give companies more control over the meeting process and determinations about compliance with the bylaws and proxy rules; and
- **Protection:** amendments that elicit specific information about nominees, stockholder proponents and persons with whom the proponent is collaborating or from whom the proponent is receiving funding.

While we are seeing a number of companies amend, or explore amending, their bylaws, some caution is warranted. Organizations such as Institutional Shareholder Services, Glass Lewis, the Council of Institutional Investors and many major institutional investors are still formulating their positions with respect to bylaw amendments adopted in the wake of the universal proxy rules.

We expect that once the proxy advisory firms and institutional investors weigh in, and newly adopted bylaws are put to the test in the 2023 proxy season, strategies for bylaw amendments may evolve.

We would be happy to discuss the range of potential bylaws amendments and the process and considerations for implementing those amendments in the context of the company's broader corporate governance posture.



Eric T. Juergens
Partner, New York
+1 212 909 6301
etjuergens@debevoise.com



Matthew E. Kaplan
Partner, New York
+1 212 909 7334
mekaplan@debevoise.com



Benjamin R. Pedersen
Partner, New York
+1 212 909 6121
brpedersen@debevoise.com



William D. Regner
Partner, New York
+1 212 909 6698
wregner@debevoise.com



Steven J. Slutzky
Partner, New York
+1 212 909 6036
sjslutzky@debevoise.com



Sarah R. Jacobson
Associate, New York
+1 212 909 6269
srjacobson@debevoise.com