



## SEC OPEN MEETING

### OVERVIEW

For questions on the note below, please contact [Daniel Austin](#) at (202) 547-3035.

Today, the SEC held an [open meeting](#) to consider whether to: (1) propose amendments to the proxy rules relating to the use of universal proxy cards and disclosure about voting options and voting standards in director elections; and (2) adopt rule amendments related to Securities Act Rules 147 and 504 to facilitate intrastate and regional securities offerings and whether to repeal Securities Act Rule 505.

### Key Takeaways

- The proposal relating to the use of universal proxy cards was approved by a vote of 2-1, with Commissioner Piwowar dissenting. He expressed concern that universal proxy cards could harm retail shareholders and empower some shareholders to further their interests at the expense of the company and other shareholders.
- The Commission voted unanimously to adopt final rules that amend Rule 147 and create a new Rule 147A, which establishes a new intrastate offering exemption.
- The Commission also adopted final rules that amend Rule 504 of Regulation D (Reg D) to increase the aggregate amount of securities that may be offered from \$1 million to \$5 million. As a result of the amendments to Rule 504, the final rules repeal Rule 505 of Reg D.

### SUMMARY

#### Item 1: Universal Proxy

##### Division of Corporation Finance (CF)

Staff recommended the use of universal proxy cards in non-exempt, contested elections. They said mandatory cards will help mitigate shareholder confusion and logistical issues.

CF staff stated that universal proxy cards will be used election contests where both parties participate in solicitation, and both registrants and dissidents would have to comply with new requirements.

Traditionally, the choices available to proxy voters are not the same as those voting in-person at meetings; however, universal proxy cards will now include all nominees.

##### Division of Economic Risk and Analysis (DERA)

DERA staff said that research is mixed on whether the proposed amendments would be beneficial or detrimental to a firm's value. Analysis did show that universal proxy use would not have affected traditional proxy contests results, but it would reduce confusion.

## **Discussion and Vote**

There were no questions, and the Commission voted 2-1 to approve the universal proxy rule, with Commissioner Piwowar dissenting.

*[Chair Mary Jo White](#)*: Today's proposal is guided by the principle that the proxy voting process should replicate the vote that a shareholder could achieve in person at a shareholder meeting. At present, shareholders voting by proxy generally must choose between competing slates of directors and cannot freely select from among individual nominees from both slates. The recommended rule changes would require proxy contestants to provide shareholders with a universal proxy card that includes the names of both registrant and dissident nominees. These changes would allow shareholders to choose individual director nominees without being needlessly confined to an "all or nothing" vote on slates of nominees chosen by management or the dissident.

*[Commissioner Kara Stein](#)*: Today's proposal addresses corporate suffrage and how it has developed. Those who vote by proxy are currently limited to either the company's nominees or non-management nominees. The universal proxy card will better safeguard effective exercise of shareholder voting and give proxy voters the same choices that they would have if they attended meeting in-person. Subject to certain notice, filing, form, and content requirements, today's proposal would require each side in a contest for the first time to provide a universal proxy card listing all the candidates up for election.

*[Commissioner Michael Piwowar](#)*: I cannot support today's universal proxy amendment because the use of a universal proxy may empower groups of shareholders to enhance their own interests at the expense of other shareholders. Furthermore, the rule will be detrimental to retail investors because many of these shareholders will not receive the important disclosures about the dissident's nominees contained in the dissident's proxy statement. The fact that the majority of the Commission is willing to satisfy important voting information solely by electronic means in the case of universal proxy suggests that we should be willing to proceed with electronic delivery in other contexts like adopting Rule 30(e)-3 under the Investment Company Act.

## **Item 2: Exemptions to Facilitate Intrastate and Regional Securities Offering**

### **Division of Corporation Finance**

CF staff recommended amendments to Rule 147, the creation of new rule 147A, raising the threshold of Rule 504, and the repeal of Rule 505.

They said the amendments to Rule 147 will provide flexibility for intrastate offerings through accessibility by out-of-state residents, and that Rule 147A establishes a new intrastate offering exemption that further accommodates offers accessible to out-of-state residents and companies that are incorporated or organized out-of-state.

Staff recommended amending Rule 504 of Reg D to increase the aggregate amount of securities that may be offered from \$1 million to \$5 million, and repeal Rule 505 of Reg D.

### **Division of Economic Risk and Analysis**

DERA staff said the economic effects of the amended Rule 147 and new Rule 147A will depend on investor confidence related to future offerings. Rule 504's increased threshold could raise investor protection concerns, but bad actor exclusions may mitigate those issues.

Staff noted that the final rules will provide start-ups with new ways to raise capital and contribute to more efficient allocation of capital.

### **Discussion and Vote**

There were no questions, and the Commission voted unanimously (3-0) to approve the amendments to Rule 147, the creation of new Rule 147A, amend Rule 504, and repeal Rule 505.

*Chair White:* Rule 147 offerings will now be accessible by out-of-state residents through the Internet or otherwise, so long as sales are made only to residents of the state or territory of the issuer's principal place of business. Issuers using the exemption will also need to demonstrate a meaningful presence in the state of the offering. The recommendation would not limit offerings to those that are registered at the state level or that rely on a state exemption that includes an aggregate offering amount limit and/or investment limitations. Increasing the offering amount permitted under Rule 504 could further facilitate capital formation by increasing the flexibility that state securities regulators have to implement coordinated review programs for regional offerings. This change will also further reduce the incentive to use the little-used exemption provided in Rule 505, which is staff is recommending the Commission repeal.

*Commissioner Stein:* Historically, intrastate capital raising has been exempted from federal registration, but the recommended amendments to the Rule 147 seek to further enhance fundraising options to local businesses. Only time will tell how well the new rules work in practice and whether we can relax capital-raising rules while continuing to promote investor protection. The amendments to Rule 147 and new Rule 147A do not contain a bad actor provision, which is a fundamental part of other recent offering exemptions we have instituted and serves as a check before an offering takes place. Allowing bad actor participation can harm companies and undermine investor confidence.

*Commissioner Piwowar:* The recommended amendments are a well-crafted and thoughtful adoption of the Commission's proposal to modernize and improve our rules related to intrastate offerings and Rule 504 offerings. I voted against the original proposal because of two provisions, but commenters were helpful in pointing us in the right direction.