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UNIVERSAL PROXY AND TRENDS IN SHAREHOLDER ACTIVISM: CORPORATIONS MUST STILL BEWARE AND TAKE CARE

Shareholder activism remains a prevalent phenomenon in the U.S. markets with no signs of abating. The contours of shareholder activism have been impacted by several developments, including the advent of the universal proxy card system. Companies must be well prepared in advance for shareholder activism generally, and they should specifically prepare to strategically manage and leverage the universal proxy card in the event of a proxy contest.

By Derek Zaba, Kai H.E. Liekefett, and Leonard Wood *

As the 2024 proxy season drew to a close, a foremost question in the minds of observers of shareholder activism was how the universal proxy card system, now in its second season, had impacted the shareholder activism landscape. The multidimensional nature of shareholder activist campaigns, as well as the imperfect data regarding such campaigns, has tempered the inclinations of market observers to make definitive claims about its effect. Observers have noted that the 2024 proxy season saw a similar number of public campaigns as compared to previous years. However, activists had significantly more difficulty in 2024 electing directors at the ballot box. Definitive answers about the effect of universal proxy are elusive, given that much activism occurs out of public view and that companies may have a decreased willingness to permit weaker campaigns to proceed to a shareholder vote.

Meanwhile, shareholder activism is still a staggeringly prevalent phenomenon in the U.S. markets, and yet it does not necessarily bring benefit to all

companies and the broader spectrum of shareholders. In this context, the universal proxy card still provides leverage in the hands of activists. Public companies should be well prepared in advance for shareholder activism generally. Specifically, they should prepare to strategically manage and leverage the universal proxy card in the event they find themselves headed toward a proxy contest.

SHAREHOLDER ACTIVISM AS AN ENDURING FEATURE OF THE CORPORATE LANDSCAPE

To appreciate the role of the universal proxy card in today's landscape, it is important to step back and take note of the prevalence of shareholder activism. Since 2022, approximately 1,000 public campaigns have been initiated at companies traded on U.S. exchanges.¹ If

¹ Based on DealPoint data for activism campaigns initiated from 2022 to August 30, 2024 for corporations traded on U.S. exchanges and OTC markets. Excludes closed-end funds.

* *DEREK ZABA and KAI H.E. LIEKEFETT are co-chairs and partners of, and LEONARD WOOD is a partner in, Sidley Austin LLP's Shareholder Activism and Corporate Defense Practice. Their e-mail addresses are dzaba@sidley.com, kliekefett@sidley.com, and lwood@sidley.com, respectively. The opinions expressed in this article are those of the authors and not necessarily those of Sidley Austin LLP or its clients.*