



Remarks to the SEC Investor Advisory Committee
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Discussion Regarding the U.S. Proxy Voting Infrastructure

Thank you Chairman Clayton, Commissioners, Investor Advisory Committee Chairman Sheehan and the other members of the IAC, for providing me an opportunity to participate in today's discussion.

Trian Fund Management, L.P. is an investment management firm founded in 2005. Trian manages capital for a global base of investors that includes institutional investors, individuals, public and private pension plans and sovereign wealth funds.

As a *highly engaged shareowner*, Trian Principals and Partners have gained a total of 14 Board seats at 12 different portfolio companies since Trian was founded in 2005. Trian has engaged in only 3 proxy contests: H.J. Heinz (2006); DuPont (2015) and Procter & Gamble (2017). I would like to focus on some of the lessons we have learned from these 3 seminal proxy contests.

- **Background.** First, I would submit to you that shareholders' ability to participate in director elections is fundamental to principles of shareholder democracy and the primary mechanism by which shareholders can hold corporate directors accountable.
 - However, in a close proxy contest, the complexities of the current proxy voting infrastructure makes an accurate and verifiable voting tabulation extremely difficult. And keep in mind, that an accurate voting tabulation is essential for all shareholder votes, including say-on-pay resolutions and Rule 14a-8 shareholder proposals.
 - Trian's 2017 proxy contest with Procter & Gamble shined a spotlight on some of the specific issues and problems with the current proxy voting system. At the outset, let me say that I am very pleased that Deborah Majoras, Procter & Gamble's Chief Legal Officer & Corporate Secretary, is joining me on today's panel so that she can share with you the issuer's perspective.
 - In the P&G proxy contest, where approximately 2 billion votes were cast, the final certified results showed a voting margin of approximately ¼ of 1%; virtually every vote cast had the potential to be the deciding vote.
 - This was likely the closest proxy contest to date. Both sides examined approximately 100,000 proxy cards during a 2-1/2 week review period,

after the preliminary certified results showed Trian's Nelson Peltz ahead by approximately 43,000 votes. Trian and P&G ultimately settled, with Mr. Peltz joining the P&G Board in early March 2018.

- Identifying the Problems. In broad strokes, let me summarize some of the problems that we found, ranging from the simple, to the complex:
 - Over-voting: Over-voting can happen, for example, when securities intermediaries, brokers and custodians who hold the shares, lend shares, which they sometimes do for a fee. Only shares held on the record date can be voted, so shares loaned out cannot be voted. If voting instructions are received for more shares than are held on the record date and there is no cutback in the number of votes submitted, an over-vote occurs. What we found was that certain over-voting by securities intermediaries was not reconciled until after the announcement of the certified preliminary tabulation of the vote by the independent inspector.
 - Chain of Custody: There is generally no way for a beneficial owner to confirm that its shares were actually voted. In addition, a break in the voting chain of authority between a voting intermediary like Broadridge, the custodian, any sub-custodians and the company's registered list, has the potential to result in shares not being included in the tabulation. As a result, there is no consistent end-to-end voting confirmation. Let me share with you two examples where a break in the chain of custody resulted in shares not being counted:
 - One major financial institution learned that because of chain of custody issues, the voting process it had been using for nearly a decade to vote a portfolio of shares held in one account, resulted in those shares being excluded by the independent inspector from the tabulation of every contested proxy contest during that time period.
 - Shares voted by a small fund administrator were excluded because the name of the Broadridge client was changed following the transfer of the fund administration business even though the custodian remained unchanged and the beneficial owners had not made any changes to how they held or voted shares.
 - Lack of a Paper Clip at Annual Meeting: One retail shareholder tried to vote its shares at the annual meeting by submitting a legal proxy and ballot and those shares were not initially tabulated because the legal proxy and ballot were separated from each other between the time of the annual meeting and the tabulation by the independent inspector. That separation occurred because shareholders were not provided paperclips to hold their legal proxy and ballot together. Ultimately, those shares were counted.

- Empty Voting: Another area of focus might be empty voting in the context of employee stock ownership plans (ESOP). Should shares held in a company ESOP for future participants and which are therefore unallocated to current participants (employees and retirees), be voted on a mirror percentage basis to match the shares that were allocated to, and voted by, current plan participants who tend to vote for management? I would suggest to you that does not produce a fair and equitable result.
- Universal Proxy Card. I would also point out that the Universal Proxy card might have utility here. In corporate elections, shareholders can vote multiple times. In the Procter & Gamble proxy contest, Trian and P&G did more than a dozen mailings between them, so shareholders had many proxy cards to choose from and many opportunities to change their vote and submit later dated proxy cards or even change their vote at the annual meeting. This sometimes leads to questions of which card was the last voted proxy card, since that is the card which is ultimately counted. In January 2017, Trian submitted a comment letter to the SEC in support of the SEC's Universal Proxy Card proposal.¹ We believe that not only does the use of a Universal Proxy Card support good corporate governance by providing all shareholders that vote by proxy-whether you are a Main Street Investor or an institutional shareholder- with the same choices available to shareholders who attend an annual meeting in person, but that it could also play a role in simplifying the proxy voting process and reducing tabulation issues by helping to eliminate the problem of identifying the last voted proxy card and of invalid conflicting proxy cards that arise when a shareholder tries to mix and match nominees from competing slates.
- Conclusion. The current proxy voting system is overly complicated, making end-to-end voting confirmation something that is not readily available today. In addition, the current system makes an accurate, verifiable vote tabulation extremely difficult in a close election. Furthermore, the voting process seems more onerous and costly than necessary and should be updated to adequately and efficiently meet the needs of shareholders and issuers. But regardless of the voting margin, shareholder votes must be accurately tabulated to ensure the integrity of the shareholder voting process.

Thank you for the opportunity to share these thoughts. I look forward to the dialogue.

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¹ See Trian's letter to the SEC dated January 9, 2017, Regarding Use of Universal Proxy Cards (SEC Release No. 34-79164, File Number S7-24-16, available at: <https://www.sec.gov/comments/s7-24-16/s72416-1471095-130411.pdf>).

Additional Information About Trian Fund Management, L.P.

Trian Fund Management, L.P. is a highly engaged shareowner that combines concentrated public equity ownership with operational expertise. We seek to invest in high quality but undervalued and underperforming public companies and to work collaboratively with management teams and boards of those companies to execute operational and strategic initiatives designed to drive long-term sustainable earnings growth for the benefit of all shareholders.