

Proxy Access Proposal Passes at Nabors

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In the first win of its kind, a majority of shareholders at Nabors Industries voted in favor of a proposal for the right of shareholders owning 3% or more for at least three years to nominate directors on a company's ballot, for up to 25% of the board. The thresholds are the same as those previously adopted by the SEC, which was later struck down by the courts. The shareholder proposal was submitted by a group of New York City Pension Funds led by the City Comptroller of New York, and co-sponsored by similar funds in five other states. The company confirmed news reports that the proposal has passed, but has made no public announcement about the specific vote results.

Nabors had been criticized for their executive compensation practices last year, which entitled the then-CEO to a cash bonus of 10% of any amount of the company's cash flow that exceeded 10% of average shareholder equity. In addition, a \$100 million award was triggered when the CEO relinquished his title but did not leave the company. The outcry resulted in a failed say-on-pay vote. The company also announced an SEC investigation into its disclosure of aircraft perks after the *Wall Street Journal* reported that flight logs showed many flights to the CEO's homes that did not appear to be reported in the proxy statement.

While claiming that proxy access is a basic shareholder right in an exempt [filing](#), the proponents also cited several issues that they argued made proxy access particularly compelling at Nabors, including the \$100 million award (which the CEO later waived), related party transactions with board members and the absence of majority voting. A later filing quoted from ISS and Glass Lewis reports in support of the proposal.

While much of the attention on proxy access proposals this season has been on the versions proposed by U.S. Proxy Exchange and Norges Bank since they put forth the bulk of the proposals, it was always questionable whether they would succeed, given that their low thresholds likely caused institutional investors to question their reasonableness. In addition, the SEC staff permitted the exclusion of several proposals.

Instead of peppering the landscape with proposals, seasoned shareholder proponents like the City Comptroller targeted only a few companies that have been criticized for perceived governance issues. It now appears that their strategy has succeeded, as Hewlett-Packard previously negotiated to include proxy access and the proposal won at Nabors. The next proposal of this kind to be voted on is at Chesapeake Energy's annual meeting this Friday, but given that their recent governance changes included the ability of two shareholders to name directors to the board, the concept of proxy access seemed to have already taken effect.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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