

A Review of the Court Ruling Denying Delay of Chesapeake's Annual Meeting

June 8, 2012 | Client Update | 2-minute read

A lot has already been written about the controversy surrounding Chesapeake's governance and its annual meeting taking place today, but since it is unusual for shareholders to litigate in order to delay an annual meeting with routine ballot items, the [court order](#) on the preliminary injunction request gives some insight on the standard.

Chesapeake originally filed a preliminary proxy on April 20th that included information regarding the CEO's now well-known interest in certain company transactions and related loans. The SEC conducted a review of the proxy after media inquiry highlighted those transactions. The company issued a final version to shareholders on May 11th. Plaintiffs later asserted that defendants failed to disclose material information necessary to allow shareholders to cast a fully informed vote and asked the Court to enjoin the meeting until the disclosure is revised. The plaintiffs alleged that the voting items impacted by the lack of disclosure include the re-election of two directors, an amendment to the equity plan and the approval of the performance goals for a new cash-based plan. The plaintiffs did not reference the advisory vote on executive compensation.

The Court determined that the plaintiffs did not meet their burden of showing irreparable injury, because the plaintiffs have an adequate remedy if the injunction is denied. Namely, if the plaintiffs ultimately prove proxy violations, the Court can void the shareholders' vote on the voting items related to that material information and order that those voting items be resubmitted to the shareholders, especially as the voting items at issue "do not involve complex business transactions." The Court also noted that the director elections were not contested, and that some weight should be given to the SEC's review and clearance of the proxy when deciding on the matter.

There may never be a need to consider whether to void at least some of the votes, since reports today indicate that the two directors received less than majority support (about 26-27% in support) and have tendered their resignations under a newly adopted majority voting policy. The say-on-pay vote fared even worse, and received only 20% in support.

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.

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