

Early Proposals to Declassify Boards Inspires Proxy Season Tip #1

August 24, 2012 | Client Update | 2-minute read

A recent [press release](#) from the Shareholder Rights Project (SRP), issued jointly with the Massachusetts Pension Reserves Investment Management Board, indicates that they have been working together on shareholder proposals to 20 companies asking them to move to annual board elections. Negotiated outcomes have already been reached with 4 of those companies.

SRP is a clinical program at Harvard Law School that represents and advises investors on submission of declassification proposals, including proposals to over 80 S&P 500 companies in the 2012 season. As we previously [noted](#), those proposals often pass by wide margins.

We understand from Scott Hirst, associate director of SRP, that the 20 proposals mentioned in the press release include submissions to companies with both 2012 and 2013 annual meetings, as some deadlines fall in August or early September. While almost all shareholder proposals arrive shortly before the specified deadlines in company proxy statements, it is useful to remember that proponents can send proposals at any time prior to the deadline (Rule 14a-8 does not provide for a “window period”). Under the SEC rule allowing for exclusion of duplicative proposals, there are advantages to being the first at the door if proposals on the same subject matter are submitted by more than one proponent.

The 14-day clock for companies to cite procedural deficiencies start when the company receives the proposal, regardless of the deadline. Last year, SLB 14F began to allow for exclusion if a shareholder’s proof of ownership is not from a DTC participant, but as we [discussed](#) this past March when the SEC Staff handed down its determination in the *Allergen* no-action letter, the Staff expects companies to provide clear guidance to the shareholder in a deficiency notice about the DTC participant requirements. Even a specific reference to SLB 14F in the company’s letter is apparently not sufficient. In such a case, we recommend providing a short description of the SLB 14F requirement along with a copy of SLB 14F as well.

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

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.