

Companies Challenge Proposals Submitted on Behalf of Shareholders

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Two companies are challenging shareholder proposals submitted by an individual or entity on behalf of the actual shareholder, under different grounds, in two no-action letters to the SEC staff.

Apple argues that John Chevedden is not eligible to submit a proxy access proposal on behalf of Jim McRitchie, citing to a case filed by Waste Connections during the last proxy season in the Southern District of Texas. The court ruled in favor of Waste Connections in a summary judgment motion, and Chevedden has appealed to the Fifth Circuit.

In its no-action letter, Apple claims that McRitchie's initial correspondence sent two days before the deadline that purports to give Chevedden the ability to act as his proxy for submitting a proposal is generic, appears to be a copy of letters previously used and, most importantly, does not identify the actual proposal. The proposal was separately provided by Chevedden to the company, without any indication of McRitchie's authorization. After Apple sent Chevedden a deficiency notice, a letter was provided noting that McRitchie is the sole proponent of the proposal. Apple claims that this fails to cure the deficiency because it does not prove Chevedden's share ownership, and if the letter was instead intended to notify the company that the proposal is being submitted from McRitchie rather than Chevedden, then it should be deemed late because the deadline had passed.

National Fuel Gas also asks the SEC to exclude a proposal submitted by a "proxy," but makes a different argument. Trillium Asset Management sent the company a proposal on behalf of the Social Justice Fund Northwest. Similar to a case the company filed in court last year but abandoned after the proponent withdrew its proposal, which we previously discussed [here](#), the company alleges that the Social Justice Fund Northwest failed to satisfy the share ownership requirements because neither it nor Trillium provided any evidence of whether either entity exercises voting authority or investment discretion over the securities that the proponent holds, which the company argues is necessary under the requirement that a proponent hold shares "entitled to be voted on the proposal."

Submitting shareholder proposals on others' behalf is quite common, especially from prolific proponents with expertise in Rule 14a-8 processes like Chevedden and the Harvard Shareholder Rights Project, which submitted the proposal that was the subject of the National Fuel Gas litigation.

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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