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SEC Staff Grants Additional Time to Fix Shareholder Proposal Deficiencies

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The staff agreed that shareholder proposals at two companies, **DTE Energy** and **NCR**, could be excluded for failure to satisfy the ownership requirements, but noted that the companies had failed to inform the proponents of the specific date the proposals were submitted when they sought additional information from the proponents. As a result, the staff gave the proponents seven additional days from receipt of its decision to provide the requisite proof.

The staff pointed to *Staff Legal Bulletin 14G*, which indicates that companies must provide a notice of defect that identifies the specific date the proposal was submitted and explains that a proof of ownership letter verifying continuous ownership for the one-year period preceding and including the submission date is necessary. DTE's request for additional information from the proponent sought verification of the ownership at the time the proposal was submitted, without reference to any actual dates.

In NCR's case, the deficiency notice cited October 8 (the date of the proposal) and October 13 (the date the proposal was received by the company). The no-action letter argued that October 8 is the date of submission for purposes of the proof of ownership. The staff responded that the date of receipt, October 13, is the date of submission. The staff granted the no-action letter relief since the proof of ownership did not include October 13 in any case, but gave the proponent additional time to correct the deficiency.

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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