

Proponent of Whole Foods Proxy Access Proposal Analyzes Whether to Withdraw

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Jim McRitchie at corpgov.net provides an interesting discussion on whether he should withdraw his shareholder proposal at Whole Foods, since the company has now adopted proxy access.

The company is permitting shareholders owning at least 3% for three years to make proxy access nominations for up to 20% of the board, rather than 25% as sought in his proposal. At the moment, both alternatives would allow for two directors when rounded down to the nearest whole number. He also questions whether the company's definition of ownership that permits funds under common management and investment control to count as one shareholder is sufficient and believes that the provision that prohibits any proxy access nominee who did not receive at least 25% of the votes in favor of his or her election from being a proxy access nominee again for two years to be a high threshold.

Ultimately, it appears from his post that he is inclined not to withdraw the proposal primarily because of the limit on the number of shareholders that can aggregate holdings to meet the ownership threshold, which is set at 20, though he indicates that he welcomes comments or suggestions on his views. It seems during the proxy season that some other proponents were also unwilling to withdraw proposals in part due to the same restriction.

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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