

Vanguard Updates Proxy Voting Guidelines on Proxy Access Proposals

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Vanguard has shifted its voting policy on [proxy access proposals](#). The major institutional investor indicates that it will continue to evaluate proposals on a case by case basis but has lowered the ownership threshold likely for support from 5% to 3%.

Vanguard believes that proxy access improves shareholders' ability to participate in director elections while possibly increasing board accountability, but at the same time proxy access should be limited to those with a meaningful long-term interest in the company in order to avoid abuse. As a result, Vanguard indicates that a shareholder or group of shareholders representing 3% of a company's outstanding shares held for at least three years should be able to nominate directors for up to 20% of the seats on the board. Companies are encouraged to continue to engage with Vanguard about the alignment of governance and compensation practices with the interests of shareholders.

The sheer number of companies adopting proxy access at 3% thresholds has made it more difficult to argue against it as the norm. The SEC staff recently determined through several no-action letters that a 5% ownership threshold does not substantially implement a shareholder proposal that seeks proxy access rights for shareholders owning 3%. However, so long as a company adopts the 3% ownership threshold and three-year holding period requirements consistent with the proposal, then other terms that deviate from the resolution, such as the total number of board seats or differences in whether the size of the shareholder group may be limited in aggregating their share ownership, would not deter the staff from deciding that a company has met the essential objectives of the proposal and allowing for it to be excluded.

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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