

SEC Staff Issues FAQ on Naming Shareholder Proposals in Proxy Cards

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The SEC Division of Corporation Finance issued a [rare FAQ](#) on a proxy rule yesterday, making clear that companies must provide details when listing shareholder proposals on proxy cards. The FAQ cites Rule 14a-4(a)(3), which requires that the form of proxy must “identify clearly and impartially” each matter to be voted on, “whether proposed by the registrant or by security holders.”

The SEC staff appears to believe that companies are being too general in naming proposals on proxy cards. According to the FAQ, just as it would not be appropriate to describe a management proposal to amend a company’s charter to increase the number of authorized shares as “a proposal to amend our articles of incorporation,” it is also not permissible for a company to describe a shareholder proposal to amend a company’s bylaws to allow for 10% or more shareholders to call a special meeting as “a shareholder proposal on special meetings.”

The FAQ provides several examples of descriptions of shareholder proposals that would not satisfy the rule, including:

- A shareholder proposal on executive compensation;
- A shareholder proposal on the environment;
- A shareholder proposal, if properly presented; and
- Shareholder proposal #3.

Even companies that would have assumed that “shareholder proposal #3” is not sufficiently compliant may be surprised that naming an item “a shareholder proposal on special meetings” is considered equally deficient.

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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