

SEC Staff Denied No-Action Relief for Independent Chairmen Shareholder Proposals that Referred to NYSE Standards

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The SEC staff recently denied no-action relief to two [Nasdaq-listed companies](#) that sought to exclude proposals asking for independent chairmen where the resolutions referred to NYSE independent director requirements. The companies had cited to prior staff decisions that permitted companies to exclude proposals where the NYSE standards were part of the resolutions for independent chairmen proposals.

The resolutions of the proposals that the Staff declined to exclude state: “[t]hat shareholders ask that [the company] adopt a policy, and amend other governing documents as necessary, to require that the Board’s Chair be held by an independent director, as defined in accordance with applicable requirements of the NYSE.”

Previously, in 2013, the Staff had permitted proposals with the following resolution to be excluded based on vagueness: “[t]hat shareholders of [the company] ask the Board of Directors to adopt a policy that the Board’s Chair be an independent director according to the definition set forth in the New York Stock Exchange standards.”

At that time, the Staff indicated that “because the proposal does not provide information about what the New York Stock Exchange’s definition of ‘independent director’ means, we believe shareholders would not be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”

No explanation was given for the recent decisions.

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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