Davis Polk

General Counsel Update - July 2009

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Companies faced with a shareholder proposal submitted under Rule 14a-8 often seek to exclude the proposal from the proxy statement by submitting a no-action letter to the SEC Staff, citing procedural or substantive deficiencies in the proposal. Based on raw data from the 2009 proxy season these exclusion requests appear to be facing more resistance from the Staff. According to RiskMetrics Group (RMG) as of March, 1,126 shareholder proposals were submitted to 481 companies in the 2009 season, addressing governance, compensation and social and environmental issues. Companies that sought to exclude governance proposals prevailed only 48% of the time, down from 69% in 2008. Companies that sought to exclude social and environmental resolutions prevailed 67% of the time.

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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