

Announcing the Frequency of Say-on-Pay

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Questions have come up about whether companies can declare how frequently they intend to hold say-on-pay votes in the Form 8-K announcing annual meeting results within four business days after the meetings, or whether they must wait and make the disclosure in an amended Form 8-K. While this seems to demand a simple “why not” response, the confusion stems from the fact that careful readers of the rules noted that the Form 8-K itself only provides for disclosing future frequency in an amended 8-K, to be filed no later than 150 days after the end of the meeting and 60 days before the 14a-8 shareholder proposal deadlines.

The instructions do not appear to be exclusive, and if a board has made a decision there seems to be no reason to later prepare an amendment and make two filings. In fact, at least half of the companies that have announced annual meeting results so far have gone ahead and declared their future intentions with respect to the frequency of say-on-pay, in particular where (a) the board recommended annual and (b) votes were overwhelmingly in favor of annual.

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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