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And Then There Were Sixteen A Rundown on Proxy Access Shareholder Proposals

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Instead of being the first company with a proxy access shareholder proposal voted on at its meeting, Hewlett-Packard recently became the third company to agree to implement proxy access. If approved at the 2013 meeting, HP would allow shareholder groups that own at least 3% for 3 years to nominate candidates for up to 20% of the board. HP follows in the steps of **Western Union and KSW**, in making efforts to permit proxy access in response to these shareholder proposals. HP managed to get its proposal, submitted from Amalgamated Bank, withdrawn, but Western Union and KSW are seeking exclusion through the SEC no-action letter process and are still waiting to hear.

Since several companies have submitted no-action letters to the SEC staff in an effort to exclude the proposals they received, it is unclear how many will actually be voted on. Currently, there are five different variations of proposals, and without HP, a total of 16 outstanding, as noted below:

- Seven companies received a version from retail shareholders that was associated with the US Proxy Exchange, which seeks implementation of proxy access for shareholders that own 1% for 2 years (Bank of America, Chiquita, Ferro Corp., Goldman Sachs, MEMC Electronic Materials, Textron and Sprint). All but Ferro Corp. have sought exclusion on the basis of no-action letter requests.
- Six companies received binding proposals from Norges Bank, which seeks proxy access rights for shareholders that own 1% for 1 year (Charles Schwab, CME Group, Pioneer Natural Resources, Staples, Wells Fargo and Western Union). Western Union has sought to exclude this proposal by writing the SEC staff on the basis that it is submitting its own proposal. Charles Swab and Wells Fargo argued that the website reference referred to in the proposal should be removed, and Staples made various other arguments to exclude.
- One company (Nabors) is reported to have received a proposal from several state pension funds based on previously adopted SEC Rule 14a-11 standards of ownership levels of 3% for 3 years, similar to HP's proposal.
- Two companies (KSW and Microwave Filter Corp) received binding proposals from the Furlong Fund. The KSW proposal seeks proxy access for shareholders owning 2% for 1 year, while the proposal received by Microwave Filter Corp was in connection with a proxy contest, and asks that shareholders owning 15% for at least one month be able to nominate candidates.

We'll continue to track developments throughout the proxy season, as it will be interesting to see how these proposals fare in their inaugural year.

Note: Thanks to James McRitchie at corp.gov.net for pointing out that we missed Princeton National Bancorp. Inc (PNBC) on our list of companies that received proxy access shareholder proposals. PNBC received the retail version.

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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