

Recent Proxy Access Proposals by Chevedden and Steiner Survive SEC Challenge

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The quieter summer months muted what may turn out to be an important turning point in the proxy access landscape: the SEC staff denial of no-action requests for proxy access proposals submitted by John Chevedden and Ken Steiner. Two of the most prolific proponents of shareholder proposals appeared to have entered the proxy access and private ordering debate. According to SharkRepellent, the two proponents, along with Evelyn Davis, together sponsored more proposals in 2012 than any other proponent, including well-known organized institutions.

Messrs. Chevedden and Steiner are arguably responsible for the large number of companies that have provided shareholders with some right to call special meetings, though usually at higher levels than those demanded in the proposals. One thing that proxy access proposals have in common with the special meeting proposals submitted by Messrs. Chevedden and Steiner is the focus on the appropriate stock ownership threshold before action can be triggered. In the context of special meeting proposals, many companies have been adopting their own formulation in order to exclude the shareholder proposals.

The [form](#) of proxy access proposal submitted to Medtronics and Forest Laboratories are from the U.S. Proxy Exchange (?Version A?) and updates the prior version that the SEC staff had ruled can be excluded from proxy statements. If adopted, the proposals would allow for (a) one or more shareholders who own at least 1% of outstanding shares for two years and/or (b) 50 or more shareholders who have owned at least \$2,000 worth of stock continuously for one year during the preceding 60 days, to submit director nominations for up to 12% of the board.

The original proposal from the U.S. Proxy Exchange, with these same ownership thresholds, were voted on at only two companies, Ferro Corporation (13% in favor) and Princeton National Bancorp (32% in favor). The average support of 36% for the total of 9 that came to vote, excluding Nabors Industries and Chesapeake Oil where the proposals passed, is fairly high for a new proposal, especially since several were binding resolutions that tend to draw lower votes. Both Medtronics and Forest Laboratories are holding meetings in August.

While we had already expected to see more proxy access proposals in 2013 than the 22 that were sponsored this year, the involvement of two highly experienced, and tireless, proponents who tend to submit proposals in large numbers across a wide range of companies, with a version that has withstood the SEC staff's examination, makes that prediction a certainty. The resolutions cite a number of reasons the proponents appeared to have targeted these two companies, primarily aimed at director matters (support for director elections, overboarding, long tenure, director ages and lack of experience), but both refer to the fact that a number of directors own no company stock. In addition, Jim McRitchie at Corp.Gov.Net [declared](#) that companies with failed say-on-pay votes could be targets for proxy access proposals.

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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