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Retail Proxy Access Proposals Generate Low Support

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In July we **discussed** the prospect of two proxy access shareholder proposals coming up for vote this summer, first at Forest Labs and then Medtronic. Both were generated by the form developed from the U.S. Proxy Exchange. This “retail” version submitted by John Chevedden and Ken Steiner sought to permit access nominations by (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, for up to 12% of the board.

While the average level of support prior to these companies’ meetings was 36% for access proposals, excluding Nabors Industries and Chesapeake Oil where the proposals passed, it appears that their investors were not favorably inclined toward these two proposals. At Forest Labs, the proposal was supported by 25% of shares voting, in the midst of a proxy contest with Carl Icahn. Mr. Icahn recommended that shareholders mark abstain on the access ballot item. More recently, Medtronic reported that the proposal received only slightly over 7% of “for” votes, a record low.

What might have been a significant influence on the vote outcomes was ISS’ negative recommendations for both proposals, because of concerns that the second threshold would allow holders owning as little as $100,000 to nominate candidates for the board, a threshold that the proxy advisory firm declared was too low. In addition, there was no limit on the total number of seats that could be filled through proxy access, which raised the possibility of a change in board control.

U.S. Proxy Exchange members had attempted to explain their position to the advisers, as they **described**, and indicated that Glass Lewis also declined to support the proposal. A similar version, but with a cap on the total number of nominees at 48%, is coming up at H&R Block. In addition, ISS’ survey policy for their 2013 guidelines sought input on appropriate access thresholds and safeguards, so there will be more to watch for as we monitor these developments.

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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