

Binding Bylaw Proposals for Independent Chairman by Norges Bank

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Less attention is paid to shareholder proposals during the summer months, which is when Norges Bank Investment Management (NBIM) submitted a series of [proposals](#) seeking independent chairmen at a number of companies. While not an uncommon topic for shareholder proposals as we previously [discussed](#), this version called for an immediate bylaw change mandating that the chairman be independent upon the requisite shareholder approval.

Almost all shareholder proposals are precatory, written as advisory requests urging boards of directors to take action, but NBIM, the asset management unit of the Norwegian central bank which manages the Norwegian Government Pension Fund Global, seems to be fond of the binding form. It is probably most well known as the proponent of recent binding bylaw proxy access [proposals](#).

While the binding bylaw independent chair proposals were not new for NBIM, no-action letters were written this summer and the SEC staff ultimately determined that the proposals can be excluded from proxy statements, given the vagueness of the reference to the NYSE standard required to be followed for determining chairman independence. NBIM used largely the same text in its resolutions as the proposal that the SEC decided [Wellpoint](#) could keep out of its proxy statement back in February, although a very similar proposal also referencing the NYSE director independence standard received the opposite treatment by the SEC in its rulings for [GE](#) and others.

Like the Wellpoint proposal as submitted by SEIU Master Trust, NBIM's proposal stated that the board's chairman be an independent director according to the definition set forth in the NYSE listing standards, unless the company's stock ceases to be listed on the NYSE and is listed on another exchange, at which time that exchange's standard of independence should apply. Compare that to GE's proposal which requested that the chairman be an independent director by NYSE standards who had not previously served as an executive officer of the company.

Given that there is a similar form of proposal that the SEC has found must be included in proxy statements, watch for the defects in these versions to be fixed in future submissions. As history has shown, binding bylaw proposals calling for independent chair can be potent. In 2009, such a [proposal](#) passed at Bank of America, leading to Ken Lewis' resignation as chairman.

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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