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Update on Company Court Action to Exclude Declassification Shareholder Proposal

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We previously **reported** on an interesting action by National Fuel Gas Company (NYSE:NFG) regarding a shareholder proposal submitted by the Harvard Shareholder Rights Project, on behalf of a public pension benefit trust, seeking declassification of the company's board of directors. The company had sought a declaratory judgment in U.S. District Court for the Western District of New York, arguing that the proponent was unable to credibly or accurately represent that the proponent intends to hold the securities through the annual meeting, as required by Rule 14a-8, because the proponent had delegated to a money manager the investment discretion over the proponent's National Fuel stock. The company further alleged that the proponent had also delegated voting authority to the same money manager, whose Form 13F reported that the money manager had sole voting authority over the proponent's National Fuel stock, so that the proponent was not entitled to vote at the meeting as required by Rule 14a-8.

We understand from the company itself that the proponent has since withdrawn the shareholder proposal, and the company then voluntarily dismissed the lawsuit. According to the company, this represents an appropriate outcome given the procedural issues surrounding this proposal.

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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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