

No-Action Letter Challenge to New Version of Retail Proxy Access Proposal

January 25, 2013 | Client Update | 2-minute read

Perhaps the surprise of the proxy season so far is the relative quiet with respect to proxy access shareholder proposals, as there have been few reports of companies receiving them. This may follow the general trend that there appears to be less shareholder proposals this year overall, or it may be an indication that the traditional institutional proponents are following through on their original plan of targeting these proposals only at a few select companies.

While companies have not publicly declared receiving them and the traditional data sources are not showing much, recently a no-action [letter](#) by iRobot Corporation arguing that a proxy access proposal should be excluded on the basis of vagueness and ordinary business indicates a new retail version has been submitted to companies. The proposal seeks nominations by (a) any group of shareholders who have held at least 1% but less than 5% of shares continuously for at least 2 years or (b) any group of shareholders of whom 50 or more have each held continuously for 1 year shares worth at least \$2,000, and collectively represent at least one-half of 1% but less than 5% of shares. Each group may nominate up to 24% of the board.

The proposal represents a change in ownership thresholds from prior retail versions of proxy access rights, which we previously discussed [here](#). Those proposals had received low support as a result of negative recommendations from ISS and Glass Lewis, which criticized the proposals for setting the ownership levels so low that shareholders with as little as \$100,000 at stake (50 shareholders with the Rule 14a-8 amount of \$2,000 each) could make access nominations. If the iRobot proposal survives the SEC no-action request (one argument being made is that the ownership thresholds as written are vague and indefinite), it will be interesting to see if the proxy advisory firms find these standards to be more appropriate.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.