

Annual Meeting Preparation: What Will You Do if a Proponent Does Not Show to Present the Shareholder Proposal

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As companies prepare for annual meetings, they should consider in advance their preferred approach if the proponent or a designated representative does not attend the meeting to properly present the shareholder proposal that it submitted.

Rule 14a-8(h)(3) permits a company to exclude, for two years, any shareholder proposals from a proponent who fails to appear and put forward the proposal at the annual meeting, unless the proponent can demonstrate good cause. As evident in a recent SEC staff decision disagreeing with Sprint's argument to exclude a proposal on this basis, any ambiguities are likely to be viewed in the proponent's favor.

At the 2012 annual meeting, Sprint's ballot included a shareholder proposal from the AFL-CIO and another from the Office of the New York Comptroller on behalf of several New York City pension funds. Several days prior to the meeting, the New York City pension funds informed the company that the same representative designated to present the AFL-CIO proposal would also be presenting the funds' proposal at the company's meeting.

According to transcripts, after the AFL-CIO representative made a lengthy statement about the union's proposal, the Chairman then called upon him to present the New York City pension funds' proposal. The representative responded, "Well, actually I was only here to present the first one." The Chairman stated, "But you're tagged with this one too, buddy," after which the representative agreed that he was indeed "tagged with this one. I'll just stand here and introduce myself again and say that the AFL-CIO urges you to support this proposal." He did not name the pension funds' proposal, read the resolution or mention the pension funds. He later informed the company that he was surprised and unaware that he was responsible for presenting more than one proposal.

Recently, Sprint submitted a no-action [letter](#) to exclude another proposal that the New York City pension funds submitted to the company for the 2013 meeting, on the basis that no representative attended the 2012 meeting to present their 2012 proposal. In its response letter arguing that the 2012 proposal was properly presented, the pension funds used the transcript records to note that the Chairman had specifically called upon the AFL-CIO representative to present the pension funds' proposal, and the Chairman then reminded the representative of this when he indicated no awareness of the proposal. In addition, the pension funds pointed out that the company's Form 8-K announcing the 2012 meeting results reported the votes for the pension funds' proposal, without asserting that the proposal had not been properly introduced.

Companies may want to anticipate in their annual meeting scripts the possibility that the appropriate representative of a shareholder proposal may not be present at the annual meeting, and provide the chair of the meeting with explicit statements that could preserve their ability to make Rule 14a-8(h)(3) arguments in the future.

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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