

Another Proxy Access Proposal Wins

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Since the SEC rules were struck down in 2011, proxy access shareholder proposals have not disrupted the corporate governance landscape as many had feared, but they are slowly gaining momentum. Recently, a proposal to allow shareholders owning 3% or more for at least three years to nominate directors on the company's ballot received a strong showing of 62% in support at Darden Restaurants, home of Red Lobster and Olive Garden, among others.

This type of proposal has now received a majority of votes cast at four out of six companies this season, including at Century Link (72%) and Verizon (53%). At Nabors, the company waded into some controversy after it claimed under Bermuda law that abstentions and broker non-votes both count against the proposal, and put the final tally at 47% support even though a majority of the votes actually cast for the proposal favored it. An access proposal also received over 40% support at Disney, so that Microwave Filter's only 15% favorable result appears to be an anomaly.

The proposals with 3%/3-year requirements have ISS approval. ISS also favors proposals seeking 1%/1-year thresholds, although those have not passed this year, with the highest support shown at Staples (37%). ISS continues to recommend against the version most likely to be submitted by retail investors, who want to allow access nominations by 50 or more shareholders who individually own at least \$2,000 worth of stock and collectively own at least .5%. Without ISS on its side, those proposals tend to average below 10%.

With no obvious campaigns and no exempt solicitations filed, the proponent, the Nathan Cummings Foundation, declared that the results at Darden Restaurants represent a major victory and "an unprecedented shareholder revolt," indicating that they will be watching the company to see how they respond.

Based on this season's results, companies that receive proxy access proposals with 3%/3-year thresholds should be aware that the odds of those proposals passing seem fairly high.

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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