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Shareholder Proposals Seeking Divestitures

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While notices of exempt solicitations are becoming more common, they usually do not involve a proponent's tweets about the company, as is the case with Carl Icahn and the Apple annual meeting proxy statement. Icahn and affiliates submitted an advisory proposal that Apple commit to completing not less than $50 billion of share repurchases during its 2014 fiscal year.

Since then, the proponent has filed notices of exempt solicitations, located on Apple's SEC Edgar site, that include tweets such as: "Bought another $500mil of $AAPL tday, bringing our total to 3.6 billion. If board doesn't see AAPL's 'no brainer' value we sure do." and "We feel $APPL board is doing great disservice to shareholders by not having markedly increased its buyback. In-depth letter to follow soon." Most recently, a new notice included just this tweet: "Just bought $500 mln more $AAPL shares. My buying seems to be going neck-and-neck with Apple's buyback program, but hope they win that race."

It has also been **reported** that Icahn sent eBay a shareholder proposal seeking a non-binding vote on whether the company should spin off PayPal, its electronic-payments business. While this type of proposal is unusual, with less than 10 since 2005, a similar proposal to Timken from Relational and Calstrs in 2013 passed, as we discussed **here**, and led to the company agreeing to spin off its steel unit.

Less noticed was a proposal at Hamden Bancorp's November 2013 annual meeting in connection with a proxy contest led by Clover Partners, asking that the company's board explore enhancing shareholder value through an extraordinary transaction, including selling or merging the company. The SEC staff declined to permit the proposal to be excluded due to vagueness or ordinary business grounds, and the proposal ultimately received 48% support. In a press release announcing the results, the company indicated that it retained an investment bank to help it identify and evaluate various strategic and/or operating scenarios intended to maximize shareholder value.

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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