

New SEC Rulemaking Petitions Seek to Change Disclosure

April 22, 2014 | Client Update | 3-minute read

U.S. public companies concerned with pending governance changes are waiting and watching the SEC work on the remaining Dodd-Frank mandates and possibly take action on projects related to disclosure reform and proxy advisory firms. As if this is not enough for the SEC's agenda, two new rulemaking [petitions](#) ask for further reforms.

Resubmission thresholds for shareholder proposals. The Chamber of Commerce, NACD and others are seeking [amendments](#) to Rule 14a-8 to "significantly increase" (without making a specific recommendation) the level of support that shareholder proposals must receive before being eligible to be included in companies' proxy statements again. Currently, a proposal dealing with substantially the same matter may be excluded only if it failed to receive the support of 3% of shareholders the last time it was voted on (if voted on once in the past five years), 6% if it was voted on twice in the past five years, and 10% if it was voted on three or more times in the past five years. The petition blames the proxy advisory firms for their increased influence leading to stronger votes for a variety of social proposals, which renders the existing resubmission thresholds meaningless. In 2013, only 11, or less than 2%, of proposals failed to achieve the minimum 3% support.

The SEC had previously evaluated but ultimately rejected a proposal in 1998 to increase the resubmission thresholds to 5-15-30 instead, but the petition points out that since then much has changed in terms of weighing the cost-benefit analysis for SEC rulemaking (the petition points to a study that estimates costs of \$89,000 per proposal, or \$90 million in total). The repeated inclusion of proposals that have been rejected by a vast majority of shareholders, the petition concludes, undermines all the reasons that the rule was adopted in the first place, including concerns regarding wasted shareholder resources, diffusing management attention and failing to restrict proposals to matters of interest to a significant number of shareholders.

Political contributions disclosure alleging (and naming) specific companies had "discrepancies" between their voluntary corporate disclosures and election law reporting. Citizens for Responsibility and Ethics (CREW) submitted a rulemaking petition urging the SEC to require public disclosure of political contributions, incorporating the existing well-known 2011 petition. CREW's method of persuasion, however, also includes citing to its own study that purports to reveal that several major companies that have agreed to voluntarily disclose their political contributions are "failing to meet their promises of transparency" with respect to what the petition deems "dark" money, namely funds to social welfare groups and trade association fees used for election-related activities. The petition claims that companies either did not report those contributions as promised, or under-reported the amounts, particular to 527 groups. It concludes that the SEC needs to formalize requirements because the voluntary disclosure by companies is inaccurate or confusing.

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.