

Success of Proxy Access Proposals Depends on Threshold Ownership Levels

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McKesson Corporation [announced](#) that it intends to submit a proxy access bylaw amendment for shareholder vote at the company's 2015 annual meeting. The company has not yet filed its proxy statement for this year's meeting.

This season, proxy access shareholder proposals have divided along two fronts, seeking different threshold ownership levels before nominations can occur by using either the original SEC rulemaking of 3% ownership for three years or following what is known as the retail approach. That approach, submitted by individual shareholder proponents, asks boards to allow shareholders who own at least 1% but less than 5% to nominate directors onto company proxies, or any party where 25 or more shareholders have held at least \$2,000 of shares. Along with investors, the proxy advisory firms have traditionally viewed the retail proposal thresholds as far too low and not supported them, and as a result several of those proposals received single-digit support at Citigroup, Goldman and Bank of America.

At the other end of the spectrum, shareholder proposals asking for access to nominations through company proxies for shareholders owning 3% of shares for three years have passed by a majority of votes in support (without counting abstentions or broker non-votes) at four companies: Big Lots (65.8%), Boston Properties (64.5%), International Game Technologies (57.8%) and Nabors (51.8%). In addition, early reports indicate that a proxy access proposal passed at Abercrombie & Fitch's meeting yesterday. At some of the other companies where it did not pass, the proposals received above 40% support. We [discussed](#) previously Disney's tactics in having the proposal withdrawn right before its meeting.

In 2012, the first proxy access proposal at a major company that received more votes in favor than against the proposal was at Nabors, with a 3% ownership and three-year holding threshold. The number of shareholder-nominated candidates was capped at 20%. The same proposal was in the proxy again in 2013 and had similar results, but in each case, since the company counts abstentions and broker non-votes as "against" the proposals, it determined that the proposals were not approved.

This April, Nabors adopted a policy (not a bylaw amendment) permitting that a single shareholder may nominate a single director candidate for inclusion in the company's proxy if the shareholder has continuously owned 5% or more for three years beginning on or after the 2014 meeting. According to Nabors, the company became only the third company in the S&P 500 to provide any type of proxy access bylaw. It appears that investors were not sufficiently influenced by this action, however, because for the third consecutive year, more votes were cast in favor than against for the proxy access shareholder proposal that the company had to include yet again in its 2014 proxy statement. Just like in prior years, with the way the company counts its votes, the company disclosed that the proposal was not approved.

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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