

Company Disputes Claims Related to Vote Counting for Equity Plan Approval

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As we previously discussed [here](#), in May, a shareholder challenged the validity of an amendment to Cheniere Energy's 2011 incentive plan that was voted on at the company's February 2013 meeting. In the complaint, the plaintiff questioned whether abstentions should have been counted as votes "against" the plan, based on the company's bylaws. According to the plaintiff, treating abstentions as "no" votes would have meant that the plan was not approved by shareholders.

Citing the litigation, Cheniere Energy postponed its annual meeting originally scheduled for June to September 11, 2014. It also decided to remove proposals to further amend the plan that had been scheduled for that meeting.

The company has since filed a motion to stay or dismiss the plaintiff's claim. The company argued that since a shareholder vote for the 2011 plan was not required by its bylaws, charter or pursuant to state law, but was held only in compliance with the NYSE listing standards, then only the NYSE voting standard should apply. NYSE rules require approval of a majority of "votes cast." The company's motion declared that abstentions should not be counted under a "votes cast" standard (it appears that the company is referring to the way "votes cast" is understood under Delaware law).

Since more than 17 million shares have been issued under the 2011 amendment and only about 100,000 shares remain, the company asked the court to first declare, under Section 205 of the Delaware General Corporation Law that became effective this April, that those issuances are valid even if the court concludes that abstentions should have been considered as "no" votes. Section 205 allows Delaware corporations and other parties to petition the Chancery Court to validate or invalidate corporate actions under certain circumstances.

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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