

January Meetings Showcase Proxy Access and Director Tenure Proposals

February 2, 2015 | Client Update | 2-minute read

A proxy access proposal submitted by John Harrington received 53.46% of the votes cast in favor at Monsanto's annual meeting on Friday. In a press release, the company indicated that the board will take the vote into consideration, including the discussions they have had with shareholders regarding the evolving role of proxy access, and will also seek additional shareholder input.

The proposal sought to provide proxy access rights to any shareholder, or group of shareholders, owning 3% or more of common stock continuously for at least three years, with the ability to nominate up to 25% of the board. The brief supporting statement focused on environmental and social concerns regarding the company's products.

The company's opposition statement asserted several key governance strengths and the existing ability for shareholders to make nominations and communicate with the board. In addition, the company indicated concerns that allowing shareholders to nominate competing candidates in its proxy statement could undermine the role of the nominating and corporate governance committee, enable holders who own as little as 3% to bypass the existing process at little or no costs to themselves, lead to contested elections that would impose expenses and divert board and management attention and ultimately require the company and its shareholders to pay high costs "for a regime for which there is no demonstrated need."

A shareholder proposal requesting an independent chairman at Monsanto was soundly defeated. The company filed additional [soliciting materials](#) that provided more discussion of the role of the lead director than what was disclosed in the proxy statement, including a comparison of the duties of the company's CEO and chairman and the lead director.

At Costco, a shareholder proposal that requested the adoption of a bylaw that would require at least 67% of the board to have less than 15-years total tenure did not pass. The proposal's supporting statement pointed out that eight of the 14 directors had tenure longer than 15 years.

The company's opposition statement in response began with a graph showing how Costco out-performed several comparable retailers and the S&P 500 index. It defended the importance of long-serving directors as necessary to the company's long-term perspectives. Average director tenure is less than 15 years, while two of the longest-tenured board members are founders of the company who continue to contribute to the board.

The company indicated that they recognize the value of director succession and have been searching for director candidates since its last annual meeting, which has not yet yielded nominations. The company expects to find new board members before its 2016 meeting.

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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