

Whole Foods Delays Its Annual Meeting Due to SEC Decision on Its Proxy Access Proposal

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As a result of the SEC decision to withdraw its no-action letter decision granting Whole Foods the ability to exclude a proxy access shareholder proposal on January 16, the company has decided to delay its annual meeting. According to the company's announcement in an 8-K filed on Friday, the company had planned to file a definitive proxy statement on January 22 for an annual meeting scheduled to be held on March 10. The company views the postponement of the meeting as necessary to allow its board adequate time to review and evaluate the company's alternatives, and meet applicable deadlines.

We previously discussed the company's original no-action letter request [here](#) and the SEC's determination regarding Rule 14a-8(i)(9) this season [here](#).

Whole Foods' preliminary proxy statement contains a management proposal which represented a change in terms from what the company had indicated in its SEC no-action letter, asking shareholders to approve amendments to its bylaws to permit any single shareholder or group of funds under common management (but not a group of shareholders) owning 5% or more of the company's common stock for five years to nominate board candidates at annual meetings, limited to the greater of one director or 10% of the board.

If it had proceeded, it would have been the first company this season to only include a proxy access management proposal in its proxy statement. The company has not yet settled on another meeting date.

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

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