

Spotlight on Pro Rata Vesting, Rather than Accelerated Vesting, of Awards in Change in Control Events

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According to Amalgamated Bank, the Trustee to the LongView Funds, five companies have agreed to [adopt new measures](#) to limit payments in the event of a change in control. Amalgamated Bank submitted several shareholder proposals asking boards to adopt a policy that there will only be vesting on a partial, pro rata basis upon a senior executive's termination in a change in control situation, instead of acceleration of vesting. In 2014, four companies received more votes in favor of these proposals than against them. Valero Energy has adopted such a policy, which is posted on [its website](#).

Prior to this season, the SEC staff permitted companies that were asking shareholders to approve equity plans to exclude those types of shareholder proposals. The rationale was that the change in control provision in company equity plans that allowed for accelerated vesting, usually either "single trigger" or "double trigger," conflicted with request to eliminate accelerated vesting in the shareholder proposals. This argument is another one that is no longer currently available once the SEC announced that it has suspended granting no-action letter decisions on the basis of Rule 14a-8(i)(9).

The proposal will be coming up for vote at Yum Brands, where the company filed [additional materials](#) arguing that they already adopted "double trigger" vesting several years ago, and that accelerated vesting aligns management's incentives with the interests of shareholders to enhance value by completing a transaction and focuses management on shareholder interests instead of their personal situations.

The Council of Institutional Investors also adopted a [new policy](#) governing change in control payments. Instead of automatic accelerated vesting, the policy wants compensation committees to have discretion to permit full, partial or no accelerated vesting. As an example, adjustments may be appropriate to account for the actual performance delivered or the proportional amount of time that passed from the beginning of the performance or vesting period to the trigger date. Boards that decide to fully accelerate awards should disclose their rationale.

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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