

Proxy Access Shareholder Proposals Show Mixed Voting Results So Far

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At ten companies where shareholders have cast votes on proxy access shareholder proposals this season, four companies received more votes in favor of the proposal than against it, while a majority of shareholders did not support the proposal at six companies.

Counting only “for” and “against” votes, Arch Coal’s proposal received the lowest support at 36%. The company had previously adopted proxy access bylaws allowing shareholders owning at least 5% of shares holding for three years to nominate access candidates, with a maximum number of 20 shareholders permitted to aggregate their holdings.

Other proposals that did not receive majority support ranged from 39% in favor at Apple, which we previously discussed [here](#), and 42% to 46% support at Domino’s Pizza, PACCAR, Cabot Oil & Gas and VCA. At three companies, the shareholder proposals received 53% to 67% in support. AES had both the shareholder proposal and a separate non-binding management proposal to adopt proxy access with an alternative 5% ownership threshold. That management proposal was favored by 36% of shareholders, while the shareholder proposal received 66% of the “for” votes. The company also had two special meeting proposals – one shareholder proposal and one company version – on the ballot. For that topic, the company proposal permitting shareholders owning at least 25% to call a special meeting prevailed over the shareholder proposal seeking the right for 10% holders.

At this point, over 60 companies with proxy access shareholder proposals have filed proxy statements. More than 40 of those companies are simply opposing the shareholder proposal. Other variations include seven companies that have already adopted, or have indicated that they will adopt, their own version of proxy access provisions. Interestingly, two of those companies will have provisions with 3% ownership thresholds, but one company will allow only five shareholders to aggregate holdings and another limits the aggregation to 20 shareholders. It appears that the proponents for those shareholder proposals did not withdraw their proposals even though those companies are permitting ownership thresholds to be set at 3% of shares outstanding.

Two other companies are supporting the shareholder proposal and one company’s board has decided to take no position on whether shareholders should support or oppose it. There remains at least four companies that have both management and shareholder proposals, with different ownership thresholds, to be voted on.

In addition, at least a dozen companies have agreed to adopt proxy access and are no longer presenting those shareholder proposals at their annual meetings.

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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