

Chair White Focuses on Alternative Resolutions to Shareholder Proposals and Director Elections

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We previously discussed two elements of Chair White's keynote speech on proxy matters at the National Conference of the Society of Corporate Secretaries and Governance Professionals [here](#). In its [reporting](#), the *Wall Street Journal* has characterized her talk as an admonition to companies to "act like grown-ups," and instead of seeking regulatory solutions, to "figure it out yourselves."

Shareholder proposals was another topic in the speech. She believes that shareholders were not confused by being offered both a management proposal and a shareholder proposal on proxy access at seven companies this season, which occurred after the SEC suspended the availability of Rule 14a-8(i)(9). The concern over possible investor confusion was a central argument for being able to exclude shareholder proposals under the rule when management offered competing proposals.

Similar views were expressed in a letter by the Council of Institutional Investors, as we discussed [here](#). Chair White's view may affect the SEC staff's review of the rule, which she noted that the staff is in the process of completing, with the goal of providing clarity for next season.

The primary focus of her interest in shareholder proposals, however, was on the estimated three to four hundred or more that are withdrawn after being filed by proponents, usually through negotiations. She encouraged companies to "consider other possible steps" to proposals "rather than just saying no" and stated that "foregoing technical objections" to let shareholders vote on a matter could be a "low cost way of sounding out."

In addition, Chair White addressed "unelected" directors, a term that is sometimes used to mean directors who fail to receive a majority of shareholder support, under any director election voting regime, and remain on their boards. A study cited in her speech found only 270 cases among almost 98,000 director elections at Russell 3000 companies from 2010 to 2014.

She recognizes that whether such a director can stay on the board is a matter of state law, but said that some have advocated that the Commission require disclosures of the reasons why a board has decided to keep the director. Another request would have the listing exchanges require companies to adopt a majority voting system that imposes limits on the ability of boards to reject the resignation of directors who offer to leave under those bylaws or policies after not receiving majority support.

She indicated that even without mandated regulatory requirements, companies should share the boards' thought process and reasons for retaining directors that a majority of shareholders did not vote in favor, including the rationale for rejecting any resignations, why the director was considered to be important to the board and the director's relevant experience and expertise.

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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