

CII Warns Companies of Impact on Director Elections from Proxy Access Provisions

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CII indicated that shareholders plan to “get tough” on boards adopting what it calls “troublesome access provisions.” See [here](#) for the headline. CII’s data shows that one-third of companies that have adopted proxy access require ownership thresholds of 5% in order to nominate candidates, and this could turn into “votes against directors at these firms in the 2016 proxy season.”

The introduction discusses ISS’s policy survey results, which we previously discussed [here](#). As expected, ISS could issue negative recommendations against boards if a shareholder proposal to provide proxy access receives majority support and a board adopts bylaws with restrictions not contained in the proposal. For example, a board that mandates ownership thresholds higher than 3%, in response to a proxy access proposal that passed with a 3% ownership requirement, could indeed face ISS backlash.

CII’s data of companies that adopted proxy access with 5% ownership thresholds, however, includes companies that adopted before 2015, companies where shareholder proposals did not pass and companies that adopted proxy access early on with 5% ownership thresholds in an effort to defeat the shareholder proposal. At this time, no company has responded to a shareholder proposal that received majority support during the 2015 proxy season by adopting a 5% ownership threshold.

In other proxy access news, BlackRock [announced](#) yesterday that it will put forth a management proposal to adopt proxy access in its 2016 proxy statement. According to the release, the bylaws would permit a shareholder, or a group of up to 20 shareholders, owning 3% of the outstanding shares for at least three years to nominate up to 25% of the board.

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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