

Proxy Access Shareholder Proposal Exclusion Request Based on State Law Requirements for Record Holders to Present Proposals

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An interesting [no-action letter](#) request has been submitted to the SEC to exclude a proxy access proposal submitted by Ken Steiner.

Sunoco Products Company argues that neither the proponent nor his qualified representative appeared at last year's meeting to present a proposal he submitted. For that meeting, Steiner submitted a declassification proposal to the company. As is his common practice, he appointed John Chevedden as his designee. The company asserts that under South Carolina law and the company's bylaws, resolutions proposed by shareholders must be submitted 75 days in advance of the meeting, and must be proposed by a shareholder of record as of the date of the submission and the record date.

The company indicates that although Steiner met the eligibility requirements under Rule 14a-8, he was not a shareholder of record, and did not have a proxy from such record holder. On the morning of the meeting, Chevedden sent a representative to present the proposal. Since none of Steiner, Chevedden nor his representative were record holders or had valid proxies from record holders, the company emphasizes, the declassification proposal was not properly presented.

Rule 14a-8(h) requires that either the proponent, or a representative who is qualified under state law to present the proposal on the proponent's behalf, must attend the meeting to present the proposal. Failure to properly appear and present the proposal, without good cause, will allow a company to exclude all of the proponent's proposals from its proxy materials for the next two meetings. The SEC staff has not yet decided on the request.

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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