

Companies Argue Substantial Implementation for Proxy Access Shareholder Proposals

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A number of companies have submitted no-action letters to the SEC arguing that they have already substantially implemented the proxy access shareholder proposals that they received for their 2016 meetings.

These companies had already adopted proxy access bylaws, but then received shareholder proposals from John Chevedden to be voted on at the 2016 meetings. The proposals contain additional requirements not seen in the most common proposals voted on during the last proxy season, most notably requests to not limit the number of shareholders that can form a group or impose restrictions on proxy access candidates that do not otherwise apply to all the directors.

In the no-action letters, companies argue that the criteria for exclusion have been met because their current proxy access bylaws implement the essential objective of the new proposals, and the rule does not require full implementation.

While the existing bylaws contain a limit of 20 shareholders that may form a nominating group, the companies stated that their bylaws nonetheless compare favorably to the shareholder proposal. Some companies also argued that this provision does not meaningfully impede the ability of shareholders to use proxy access and represents a minor difference.

As for the additional qualifications that proxy access nominees need to meet, some companies argued that their board nominees undergo a thorough vetting process and these additional requirements were necessary to put the proxy access candidates on equal footing.

The SEC staff has not yet decided on any of these letters.

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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