

Status of Proxy Access Shareholder Proposals, Including Binding Bylaw Proposals

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At annual meetings so far this year, investors have already voted on more than 30 shareholder proposals asking companies to make proxy access rights available to shareholders who have owned 3% of common stock for at least three years, with more than 50 proposals remaining to be decided through August. Some of these proposals have been featured at companies that already adopted bylaws providing shareholders with the right to nominate candidates at those 3%/ three-year ownership thresholds, while other proposals are being presented at companies that are adamantly opposed to proxy access in any form.

Early voting results tend to split largely along the lines of whether companies have an existing proxy access bylaw. If they do, the proposals tend to fail even if there are differences between the proposals and the existing bylaws, such as the proposals seeking to eliminate any restrictions on the number of shareholders that can form a group to nominate a candidate. For companies that do not have proxy access at all, the proposals asking them to adopt it have generally received majority support unless there are significant insider holdings, ranging from about 57% of votes in favor to as high as 86%.

In addition, there have been a handful of shareholder proposals to try to force companies that currently have higher ownership thresholds of 5% in their proxy access bylaws to lower those requirements, some through binding bylaw resolutions. The resolutions would simply change four terms in a company's existing proxy access bylaw upon receiving the requisite support to amend the bylaws: (a) replace 5% stock ownership threshold with 3%; (b) delete the reference to the limit on the number of shareholders that can form a group; (c) replace 20% of the board seats up for nomination with 25%; and finally (d) replace 25% with 10% of the votes that a proxy access nominee must receive before the candidate cannot be re-nominated in following elections. As of early May, the binding bylaw proposals have not passed at either of the two companies where it was voted on and the results have been announced.

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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