

The Impact of Changing the Shareholder Proposal Resubmission Thresholds

November 14, 2018 | Client Update | 2-minute read

Nearly all shareholder proposals meet the current resubmission thresholds of 3%, 6% and 10%, according to a [detailed CII report](#) on the impact of potential modifications to those thresholds. The possibility of raising the support levels of proposals before they can be resubmitted is likely to be a topic at the SEC Proxy Process Roundtable tomorrow.

CII examined a dataset of the shareholder proposals voted on between 2011 and 2018, when 3,620 proposals went to vote at 677 Russell 3000 companies. Only 5% of proposals became ineligible after the first attempt, and 10% after the second and third attempts.

The current resubmission thresholds were established in 1954. At that time, between one-half and three-quarters of proposals failed to obtain enough support for resubmission. Efforts to raise resubmission levels were opposed and never adopted in 1997.

The report explores three different resubmission threshold scenarios that would increase current levels, which it dubbed (a) “modest” (5%, 10%, 15%), (b) “doubling” (6%, 12%, 20%), and (c) proposed from the Financial Choice Act and 1997 release (6%, 15%, 30%). The modest increase would double the number of ineligible proposals, and the last version would triple that amount. Under the modest and doubling scenarios, about 10% and 30% of environmental and social proposals would be rendered ineligible eventually, compared to 3% and between 8% and 13%, respectively, under the current structure.

In sheer number of proposals, though, the impact is not terribly significant under any of the three possible increases. For example, raising the current threshold to the modest level would mean the difference of 240 proposals in a seven-year period. Even a change to the highest increase proposed in the Financial Choice Act would render 457 more proposals over that time period ineligible.

Shareholders have expressed concern that some proposals that are not initially accepted eventually receive broad endorsement, and the report found that only 38 proposals that would have been excluded under the highest possible resubmission levels later gained traction and obtained high votes in favor.

While some companies have received the same proposals multiple times, the data shows that two-thirds of the proposals that received at least 3% support were not resubmitted.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.