

SEC Proposes to Raise Shareholder Proposal Eligibility Thresholds and Regulate Proxy Advisory Services

November 6, 2019

At an open meeting on November 5, 2019, the Securities and Exchange Commission (“Commission”) proposed amendments to the shareholder proposal rules, including those on submission and resubmission thresholds. While proponents must meet a stricter, tiered approach to the eligibility thresholds for submitting shareholder proposals, the Commission elected to maintain the current \$2,000 submission threshold so long as the shares have been held for at least three years.

In addition, the Commission proposed amendments to the rules governing firms in the business of providing proxy voting advice, including permitting companies the opportunity to review and provide feedback on voting recommendation reports. The proposed rules also impose conditions for meeting exemptions under the proxy solicitation rules and modify the proxy anti-fraud rules, such as including examples of disclosure failures that implicate those rules.

The Commission issued two brief announcements yesterday relating to [shareholder proposals](#) and [proxy advisory services](#) on which this summary is based. We intend to supplement this summary with a memorandum that will more fully describe the proposed amendments relating to [shareholder proposals](#) and [proxy advisory services](#), which were also released yesterday.

I. Eligibility Thresholds for Rule 14a-8 Shareholder Proposals

Under the current eligibility requirements, the shareholder-proponent must hold at least \$2,000 or 1 percent of a company’s securities for at least one year. The proposed rule includes a tiered eligibility structure as follows:

- Continuous ownership of at least \$2,000 for at least three years;
- Continuous ownership of at least \$15,000 for at least two years; and
- Continuous ownership of at least \$25,000 for at least one year.

A proponent must satisfy these requirements individually and cannot aggregate holdings with other shareholders. When a representative of a shareholder submits a proposal, the representative must provide documentation with clear authorization and the shareholder’s identity, role and interest in the proposal.

The proposed rules limit the number of proposals that each person, rather than each shareholder, can submit at each meeting to one proposal. A proponent would no longer be able to submit a proposal as a shareholder and other proposals to the same company as a representative of other shareholders. In addition, each proponent must state that he or she is able to meet with the company to discuss the proposal within 10 to 30 days of submitting the proposal.

The proposed rules raise the “resubmission thresholds of 3 percent, 6 percent and 10 percent for matters voted on once, twice or three or more times in the last five years, respectively, with thresholds of 5 percent, 15 percent and 25 percent, respectively” Moreover, the proposed rules go one step further by capping the number of times shareholder proposals can be resubmitted for proposals that failed to gain majority support three or more times in the last five years and experienced a 10 percent or more decline in shareholder support.

II. Application of the Proxy Solicitation Rules to Proxy Voting Advice

The Commission proposed amendments with respect to the proxy solicitation rules governing firms that are in the business of providing proxy voting advice and exempting these firms from the filing and information requirements. The exemption is conditioned on, among other things, the proxy advisory firm's providing the appropriate disclosure of material conflicts of interest along with the furnished advice.

In a stated effort to enhance accuracy and transparency of the information, companies and "certain other soliciting persons" must be given an opportunity to review and provide feedback on proxy voting advice before it is issued and may request the inclusion of a hyperlink to the company or soliciting person's written view of the proxy voting advice. The length of the review period depends on the number of days between the filing of the definitive proxy statement and the date of the shareholder meeting.

In addition, similar to the statements in the recent Commission [guidance](#), the SEC indicated that proxy advisory firms are subject to the anti-fraud provisions under Exchange Act Rule 14a-9. The proposed rules include examples of when failure to disclose certain information related to the rendering of advice could constitute a breach of such provisions.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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