

SEC Amends Shareholder Proposal Rule

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On September 23, 2020, the SEC adopted **amendments** to the shareholder proposal rule. Rule 14a-8 allows a shareholder that meets certain requirements to use a company's proxy statement to have its proposal voted on by all shareholders. The amendments do not change the substance of the rule, but update certain procedural requirements shareholders must meet to submit proposals.

The amendments will apply to annual or special meetings occurring on or after January 1, 2022 – and will **not** apply to the 2021 proxy season. However, a shareholder who maintains continuous ownership under the current ownership threshold continues to be eligible to submit proposals for inclusion in a company's proxy statement for meetings held prior to January 1, 2023. The amendments will be effective 60 days after publication in the *Federal Register*, and the satisfaction of the new ownership thresholds will be determined from that point.

Eligibility Thresholds to Submit a Proposal Have New Holding Periods

Currently, a shareholder must hold at least \$2,000 or 1% of a company's securities for at least one year. The amendments eliminate the 1% criterion, instead establishing a tiered eligibility structure, where the shareholder must show:

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

Shareholders may not aggregate their holdings to satisfy these dollar thresholds.

Enhanced Shareholder Information and Documentation Requirements

The amendments require that a shareholder must provide its availability to discuss its proposal with the company in person or via teleconference. The shareholder must state specific business days and times as well as contact details for this purpose. This provision addresses company concerns that some proponents use shareholder

proposals as the sole means of communication and decline any further engagement with the company, or that the company must discuss the proposal only with the shareholder's representative with no ability to discuss the proposal directly with the shareholder.

When a shareholder submits a proposal via a representative, the shareholder must provide documents clearly showing the representative's authorization, with meaningful assurances about the shareholder's identity, role and interest in the proposal. This change is meant to address certain egregious situations in the past, where companies learned that the shareholder whose stock was being used to submit the proposal was not aware of or familiar with the proposal.

One Proposal per Meeting

A person, whether acting as a shareholder or as a representative, is limited to one shareholder proposal for each shareholder meeting, such that certain representatives will no longer be able to submit a proposal both as a shareholder and as a representative for another shareholder, or submit multiple proposals to a company from different shareholders.

Eligibility Thresholds to Resubmit Prior Proposals

The amendments change the support thresholds necessary for a company to exclude a shareholder proposal from its proxy materials if the proposal deals with substantially the same subject matter as a prior proposal within the preceding five years. Specifically, a company may exclude a proposal if the most recent vote occurred within the preceding **three** calendar years and the prior proposal received support of:

- Less than **5%** (currently 3%) of the votes cast, if previously voted on **once**;
- Less than **15%** (currently 6%) of the votes cast, if previously voted on **twice**; or
- Less than **25%** (currently 10%) of the votes cast, if previously voted on **three times or more**.

While the increased thresholds are helpful, the impact of these new thresholds will depend in part on the SEC staff's interpretation of whether a proposal deals with substantially the same subject matter as a prior proposal, because in most cases the resubmitted proposal is not identical to the prior proposal.

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