

LEGAL UPDATES AND NEWS

SEC Adopts Changes to Its Shareholder Proposal Rule

The Securities and Exchange Commission (the “SEC”) recently adopted amendments to its rule governing the process for shareholder proposals to be included in a public company’s proxy statement. The amendments change, among other things, the stock ownership thresholds governing when a shareholder proposal must be included initially and on resubmission in subsequent years. The last substantive updates to the initial submission requirements and the resubmission requirements were in 1998 and 1954, respectively. The SEC’s stated intent in adopting the amendments is to help ensure that a shareholder’s ability to have a proposal included in a company’s proxy materials appropriately takes into consideration the interests of not only the shareholder who submits a proposal, but also the other shareholders who bear the costs associated with reviewing, considering and voting on such proposals included in the company’s proxy statement. The amendments will apply to public companies beginning with proposals submitted for an annual or special meeting to be held on or after January 1, 2022, subject to a transition period for the changes to the initial submission thresholds.

Initial Submission Threshold

Under the current SEC rules, a shareholder must hold at least \$2,000 or 1% of a company’s securities for at least one year in order to qualify to have a proposal included in the company’s proxy statement. Once the new rules become applicable, the thresholds will be:

- \$2,000 of the company’s securities held for at least three years;
- \$15,000 of the company’s securities held for at least two years; or
- \$25,000 of the company’s securities held for at least one year.

In addition, shareholders will no longer be able to aggregate their holdings with the holdings of other shareholders to satisfy the ownership thresholds.

Resubmission Threshold

The amendments also revise the levels of shareholder support a proposal must receive to be eligible for resubmission at a company’s future shareholder meetings. Currently, a shareholder proposal must obtain the affirmative vote of the following percentage of shareholders to be eligible for inclusion in a company’s proxy statement in subsequent years: 3%, 6% and 10% for matters previously voted on one, two or three or more times in the last five years, respectively. These will be increased to 5%, 15% and 25%, respectively. This means that a proposal would need to achieve support by at least 5% of shareholders in its first submission to be eligible for resubmission in the following three years and proposals submitted a second and third time in the prior five-year period would need to achieve 15% and 25% support, respectively, to be eligible for resubmission in the following three years.

Additional Changes

The SEC's existing rule that a shareholder may only submit one proposal to a company each year is also changing to provide that the one-proposal rule applies to "each person" rather than "each shareholder" who submits a proposal, such that a shareholder-proponent will not be permitted to submit one proposal in their own name and simultaneously serve as a representative for another shareholder to submit a different proposal for consideration at the same meeting. Likewise, a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders. This change will likely reduce the number of proposals submitted by certain retail shareholders who utilize the representative approach to enable a single individual to submit multiple proposals to one company each proxy season.

The amendments will also require a shareholder submitting a proposal to state that they are able to meet with the company no less than 10 days and no more than 30 days after the proposal has been submitted. The shareholder must also provide contact information and specific business days and time that they are available to discuss the proposal with the company. These changes should help companies that are looking to engage with proposing shareholders who have previously been unwilling to speak with the company directly with respect to shareholder proposals.

Timing

The amendments will go into effect on January 4, 2021. However, the amendments will not apply to companies and their shareholders until proposals submitted for shareholder meetings held on or after January 1, 2022. With regard to the initial submission threshold, there will be a transition period for shareholders that meet the current ownership threshold as of January 4, 2021 and then continue to meet the threshold requirements through the date the shareholder submits a proposal to the company. They will be able to rely on the \$2,000/one-year ownership threshold for proposals submitted for a shareholder meeting that is held prior to January 1, 2023.

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