First U.S. Proxy Access Nominee

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by Jason Brenkert

On November 10, 2016, GAMCO Asset Management filed a Schedule 13D/A and 14N announcing that it had used the proxy access bylaw at National Fuel Gas to nominate a director candidate for election to NFG's board at the upcoming 2017 annual meeting of shareholders. This nomination appears to be the first use of proxy access bylaws by a shareholder to nominate a director in the United States. NFG adopted its proxy access bylaw in March of 2016. Given the recent trend of companies adopting bylaws to grant proxy access to shareholders (approximately 40% of S&P 500 companies) and recent decisions by the Staff of the SEC Division of Corporate Finance to allow "fix-it" shareholder proposals to modify secondary features of proxy access bylaws (see, for example, H&R Block's Rule 14a-8 No-Action Letter), we expect that more companies will be granting proxy access to shareholder nominees in the coming years. Companies should review their director nomination process and shareholder access bylaws as part of their preparations for annual report and proxy season to be prepared to adequately address potential shareholder nominations.

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