

Proxy Access “Fix-It” Proposals Fizzle

June 27, 2017 – Governance & Compliance Insider

by Gary L. Tygesson

As the 2017 proxy season winds down, one clear take-away is that shareholder proposals attempting to modify the terms of previously adopted mainstream proxy access bylaws did not fare well. Many of these proposals focused solely on the aggregation limit, seeking to increase the number of shareholders (usually 20) that are required to meet the minimum ownership threshold (usually 3% of outstanding shares) in order to nominate a director using the company’s proxy statement. Other proposals tried to amend multiple terms of the proxy access bylaw in order to make the provisions more shareholder-friendly. To date, none of these so-called “fix-it” amendments to mainstream proxy access provisions has received majority support, and the average support for all such proposals has been less than 30%.

In addition, some companies were able to exclude proposals to amend the aggregation limits from their proxy statements by making a case under the SEC no-action process that the proposal had been “substantially implemented” where the company could provide specific information to support the view that it already had a meaningful proxy access right in place. Other companies facing fix-it amendments to multiple provisions were successful in excluding the proposal as “substantially implemented” where the company acted to adopt one or more of the amendments. See our prior memo here: [Recent Developments in Proxy Access](#).

Meanwhile, the trend of adopting mainstream proxy access provisions continues apace. Approximately 175 additional companies have adopted proxy access provisions since the end of the 2016 proxy season, and virtually all shareholder proposals seeking the adoption of proxy access bylaws have received majority support this year. More than 60% of companies in the S&P 500 now have some form of proxy access provision. The mainstream model adopted by a broad range of these companies allows shareholders owning 3% of shares outstanding for at least 3 years to nominate up to 20% of the board (or at least two members) with an aggregation limit of 20 shareholders to reach the ownership threshold. The ability of the mainstream model to withstand fix-it shareholder proposals this proxy season bodes well for this approach and may discourage fix-it

Related Capabilities

- Corporate Governance & Compliance
- Mergers & Acquisitions
- Government Enforcement & Corporate Investigations

proposals in future years.