

SEC Adopts Amendments To Modernize The SEC's Shareholder Proposal Rules

Client Alert | October 1, 2020

On September 23, 2020, the Securities and Exchange Commission (the "Commission") voted to adopt amendments (the "Amended Rules") (available [here](#))^[1] to key aspects of the Commission's shareholder proposal rule. The Amended Rules:

- modestly increase the current stock ownership threshold to submit a shareholder proposal for shareholders who have not held a company's stock for at least three years;
- expand the procedural requirements on the submission of proposals, including changes to limit abuse of the process when non-shareholders submit a "proposal by proxy;"
- change the rules to apply the one-proposal rule to each person instead of each shareholder, thereby limiting representatives to one proposal per meeting; and
- increase the levels of shareholder support a shareholder proposal must receive in order to be eligible for resubmission at future meetings.

While the Amended Rules will be effective 60 days after publication in the Federal Register, they only apply to shareholder proposals submitted for an annual or special meeting held on or after January 1, 2022, and thus will not affect the upcoming proxy season.

The Amended Rules represent the first substantive amendments to the shareholder proposal resubmission and stock ownership thresholds since 1954 and 1998, respectively. The Amended Rules are substantially the same as the amendments proposed by the Commission in November 2019 (the "Proposed Rules") (available [here](#)), but reflect amendments made in response to concerns raised on the Proposed Rules. Among other changes, the Amended Rules include a transition period ensuring that any shareholder who currently satisfies the ownership eligibility rules may continue to do so and do not include the "momentum requirement," which would have permitted exclusion of a previously voted on proposal if the level of voting support had declined significantly in the most recent vote.^[2]

The Amended Rules were approved by a 3-2 vote, with the majority viewing the Amended Rules as "reasonable and limited"^[3] steps to "adjust these rules to reflect our current markets."^[4] As Chairman Jay Clayton explained, the Amended Rules are intended as a "restructuring and recalibrating [of] the current shareholder ownership threshold for initial submissions as well the shareholder support thresholds for resubmissions" in light of "the many changes in our markets over the past 30 plus years, as well as [the Commission's] experience with the shareholder proposal process under Rule 14a-8."^[5] At the same time, the Amended Rules reflect that shareholder proposals impose costs on companies and their shareholders, and that some shareholder proponents have effectively outsourced their involvement to representatives. As explained by Commissioner Roisman, "The amendments ... aim to strike a better balance by ensuring that a shareholder who submits a proposal to a public company has interests that are more likely to be aligned with the other shareholders who bear the expense." In contrast, Commissioners Crenshaw and Lee expressed concern that the Amended Rules will suppress the rights of shareholders, undermine environmental, social and governance (ESG) initiatives and dial back shareholder oversight of management.

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[1] For a comparison of the Amended Rules with the current rules, see [Attachment A](#) to this client alert.

[2] The Proposed Rules included a "momentum requirement" that would have allowed companies to exclude shareholder proposals submitted three or more times in the preceding five years if they received less than 50% of the vote and support declined by 10% or more compared to the immediately preceding shareholder vote on the proposal.

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[3] Commissioner Hester M. Peirce, “Statement at Open Meeting on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/peirce-14a-8-09232020>.

[4] Commissioner Elad L. Roisman, “Statement on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/roisman-14a8-2020-09-23>.

[5] Chairman Jay Clayton, “Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/clayton-shareholder-proposal-2020-09-23>.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. For additional information, please contact the Gibson Dunn lawyer with whom you usually work, any lawyer in the firm’s Securities Regulation and Corporate Governance practice group, or the following authors:

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