

SEC Approves Stricter Shareholder Proposal Rules

SEPTEMBER 24, 2020

On September 23, 2020, the Securities and Exchange Commission (the SEC) voted to adopt amendments modernizing its [shareholder proposal rules](#).

RULE

DESCRIPTION

Eligibility to Submit
Proposals (Rule 14a-8(b))

- Replaces the current ownership threshold required to make a proposal (*i.e.*, holding \$2,000 or 1% of the company's securities for one year) with a tiered approach:
 - \$2,000 of the company's securities for at least three years;
 - \$15,000 of the company's securities for at least two years; or
 - \$25,000 of the company's securities for at least one year.
- Prohibits the aggregation of holdings for purposes of satisfying the ownership threshold requirements;
- Requires that a shareholder who elects to use a representative for purposes of submitting a proposal provide documentation clarifying that the representative is authorized to act on that shareholder's behalf, and to provide a meaningful degree of assurance as to the shareholder's identity, role, and interest in the proposal that is submitted; and
- Requires that each shareholder state that he or she is available to meet with the company (either in-person or virtually) not less than 10 calendar days nor more than 30 calendar days after submission of the proposal to discuss the proposal with the company.

| RULE | DESCRIPTION |
|--|--|
| Number of Proposals (Rule 14a-8(c)) | <ul style="list-style-type: none"> Institutes a one-proposal-per-each-person rule (versus a one-proposal-per-each-shareholder rule), limiting a shareholder-proponent to one proposal in his or her name at the same meeting (and also prohibiting that same shareholder-proponent from serving simultaneously as a representative for another shareholder's proposal). |
| Resubmissions of Proposals (Rule 14a-8(i)(12)) | <ul style="list-style-type: none"> Revises the level of shareholder support required to make a resubmission of a proposal from 3%, 6%, and 10% for matters previously voted on once, twice, or three or more times in the last five years to 5%, 10%, and 15%, respectively. |

Effective Date and Transition

The final rules provide for a transition period for the ownership thresholds that will allow shareholders who currently are eligible to submit proposals under the current \$2,000 threshold/one-year minimum holding period, but who do not satisfy the new requirements, to continue to be eligible to submit proposals through the expiration of the transition period that extends for all annual or special meetings held prior to January 1, 2023, provided they continue to hold at least \$2,000 of a company's securities. These amendments will become effective 60 days from their publication in the Federal Register, and the final rules will be applicable to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022. Capital Markets & Securities Law Watch will continue to monitor any changes in this area and provide updates to our readers.

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