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The SEC Modernizes Rules on Shareholder Proposals

New Rules Tighten Resubmission and Economic Requirements

On September 23, the U.S. Securities and Exchange Commission voted 3-2 to modernize its rules on shareholder proposals.

The amendments to Rule 14a-8, which will take effect in 2022, should reduce the number of special interest resolutions that reappear on corporate proxy statements each year despite receiving minimal support. The rules also will require resolution proponents to hold a larger economic stake or continuously own their shares for at least three years. The updated rules also should promote more engagement between public companies and resolution proponents.

“NIRI welcomes the SEC’s efforts to modernize the shareholder proposal rules,” said NIRI President and CEO Gary A. LaBranche, FASAE, CAE. “We believe the SEC has struck the right balance between preventing abuses and ensuring that long-term investors can still use the shareholder proposal process to raise important corporate governance issues.”

NIRI and other corporate organizations supported the SEC’s modernization of Rule 14a-8, while some governance activists opposed these changes.

“[These] carefully tailored and modest refinements will better ensure that the interests of those who submit, and re-submit, shareholder proposals are appropriately aligned with the interests of their fellow shareholders who must take the time to review, consider, and vote on those proposals,” said SEC Chairman Jay Clayton.

“Consideration of each proposal costs real money to shareholders,” noted Commissioner Elad Roisman, who voted for the new rules. “Based on the average number of proposals companies receive and their estimated costs, this adds up to tens of millions of dollars (or more) of shareholder money each year. What’s more, when put to a vote, these proposals most often get rejected, with the vast majority of other shareholders voting ‘NO,’ deciding that the

proposal would not add value to their investment. But SEC rules currently provide that even if 90–97 percent of a company’s shareholders vote ‘NO,’ a person can resubmit the same proposal every . . . single . . . year (again, all at the expense of other shareholders).”

The changes to SEC Rule 14a-8 include:

- The minimum economic requirements for filing a resolution will increase to **\$25,000** for an investor owning a company's shares for at least one year, while an investor who continuously owns a company's shares for two years must hold at least a **\$15,000** stake. If an investor has continuously owned a company's shares for at least three years, then he or she may continue to file under the current \$2,000 requirement. Shareholders may not aggregate their holdings to meet these economic requirements.
- The SEC also tightened the minimum support thresholds for proponents who seek to refile their proposals at the same company. Under the new thresholds, a resolution must receive at least 5 percent support during its first year on a company's proxy ballot in order to be resubmitted during the following three years. Proposals submitted two (or three times) within the prior five years will need to earn 15 percent (or 25 percent) support, respectively, in order to be resubmitted during the next three years. The existing resubmission thresholds, which had not been updated since 1954, are 3, 6, and 10 percent, respectively.
- Proponents will have to indicate their availability for engagement with companies after filing their proposals. The investor must provide contact information as well as specific business days and times that he or she is available to discuss the proposal with the company.
- The rules also include new restrictions on the use of representatives to present shareholder resolutions at annual meetings.

The rule amendments will apply to any shareholder proposal submitted for an annual or special meeting held on or after January 1, 2022. The final rules also provide for a transition period that would allow investors who meet certain conditions to qualify under the existing \$2,000/one-year ownership threshold for proposals submitted for a shareholder meeting prior to January 1, 2023.

Resources

[Press Release, “SEC Adopts Amendments to Modernize Shareholder Proposal Rule,” September 23, 2020.](#)

[Chairman Jay Clayton, “Modernizing the Shareholder Proposal Framework for the Benefit of All Shareholders,” September 23, 2020.](#)

[Commissioner Elad Roisman, “Statement on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8,” September 23, 2020.](#)

About the National Investor Relations Institute (NIRI)

Founded in 1969, the National Investor Relations Institute (www.niri.org) is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. NIRI is the largest professional investor relations association in the world, with more than 3,000 members representing over 1,600 publicly held companies and \$9 trillion in stock market capitalization. Through its collaborative community, NIRI advances engagement in the capital markets and drives best practices in corporate disclosures, governance, and informed investing.