

Alert

SEC Increases Rule 14a-8 Thresholds for Shareholders to Submit Proposals in Company Proxy Materials

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The U.S. Securities and Exchange Commission (“Commission”) has adopted amendments to the proxy rules to increase the threshold requirements for shareholders to access a company’s proxy materials. These new rules will make it more difficult for certain shareholders seeking to submit shareholder proposals for inclusion at a company’s special or annual meeting of shareholders.

Previously, Rule 14a-8 of the Securities Exchange Act of 1934 provided that for a shareholder to submit a proposal for inclusion in a company’s proxy materials, the shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to vote on the proposal for at least one year by the date the proposal is submitted. Under the new rules, such test is replaced with the following three alternative thresholds that will require a shareholder to demonstrate continuous ownership of at least:

1. \$2,000 of the company’s securities for at least three years;
2. \$15,000 of the company’s securities for at least two years; or
3. \$25,000 of the company’s securities for at least one year.

The Commission is eliminating a percentage-based component for shareholder ownership. Given that market value may change due to market fluctuations, the Commission advises that shareholders should determine the market value of their securities by multiplying the number of securities the shareholder continuously held for the relevant period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal.

The new rules have also increased the amount of voter support necessary for any shareholder to resubmit the same or a similar proposal in a shareholder meeting within five years of the proposal’s submission. Under the new rules, a company may exclude a proposal from its proxy materials for any meeting held within three years of the last time it was included if the proposal received:

1. Less than 5% of the vote if proposed once within the preceding five years;
2. Less than 15% of the vote on its last submission to shareholders if proposed twice previously within the preceding five years; or
3. Less than 25% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding five years.

Previously, the thresholds were 3%, 6% and 10%, respectively.

The SEC's release also, among other things, included the following changes to Rule 14a-8:

1. Requires the shareholder to include a written representation that the shareholder will be available (and to include dates and times of availability) to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal;
2. Requires a shareholder who uses a representative (including any investment adviser who submits on the shareholder's behalf) to provide signed and dated documentation of the shareholder's identity, role and interest in the proposal; and
3. Applies the one-proposal rule to "each person" rather than "each shareholder" so a single person cannot, for example, submit multiple proposals on behalf of other shareholders.

These amendments will be effective 60 days after publication in the Federal Register. The final amendments will apply to any proposal submitted for any annual or special meeting held on or after Jan. 1, 2022. The final rules will also provide for a transition period with respect to the ownership thresholds that will allow reliance on the prior \$2,000 for one-year ownership threshold for proposals submitted for a shareholder meeting held prior to Jan. 1, 2023.

The SEC's press release and fact sheet on the changes can be found [here](#) and the adopting release can be found [here](#).

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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