

Proxy Access Update—Preparing for the 2016 Proxy Season

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Proxy access predominated corporate governance issues for the 2015 proxy season, with over 100 proposals submitted on the topic, compared to 18 in 2014. Shareholder proponents achieved significant success in 2015, with an average pass rate of 54% on the 88 proposals that came to a vote, compared to a pass rate of 34% in 2014. The 2015 proxy season also saw an increase in negotiation and implementation of proxy access by board action or submission of a binding management proposal. These trends will likely continue in the 2016 proxy season.

Over 70 companies have implemented proxy access in 2015 so far, and the trend continues even after the end of the 2015 proxy season in response to shareholder-approved proposals, through negotiations with proponents or as a means to avoid the distraction and the expenditure of corporate resources involved in resisting a governance trend that some see as inevitable. See [Appendix A](#) for a chart showing details for the companies that implemented proxy access in 2015.

A group of New York City pension funds that submitted 75 proposals led the surge in proposals in the 2015 proxy season, applying selection criteria for targeted companies based on purportedly weak records on board diversity, CEO pay and climate change. Similar campaigns already in process for the 2016 proxy season are expected to focus on larger companies, companies with lagging financial performance, companies deemed to have poor corporate governance, or companies in industries that might raise environmental or other social policy concerns.

This update summarizes developments in the area of proxy access, highlights key issues and offers practical advice for companies as they prepare for the 2016 proxy season.

What Public Companies Should Be Doing Now

To prepare for the upcoming proxy season, public companies should consider taking the following actions:

- Evaluate whether the company is a likely target for a proxy access proposal in light of the considerations noted above.
- Review the company's shareholder base and the voting policies of its major institutional investors to determine the likelihood of success if a proxy access proposal is received.
- Consider engaging with the company's largest shareholders.

- Prepare a summary of the terms and conditions of a proxy access bylaw, or prepare a draft bylaw, that would be appropriate for the company so that the company can be in a position to respond quickly if a proposal is received.
- Brief the board about developing proxy access trends and the advantages and disadvantages of various options for responding to proxy access proposals, and develop a response plan.
- Review board composition disclosure, and consider enhancing disclosure on independence, diversity, the experience and skills of each director, tenure, refreshment and board self-evaluation.

How We Got Here—The Background of Proxy Access

What Is Proxy Access? “Proxy access” represents the right of a shareholder to include board nominees, at no cost to the shareholder, in a company’s proxy statement and proxy card. Without proxy access, a shareholder who has validly nominated one or more candidates for election faces the prospect of waging its own complicated and expensive solicitation. Proxy access has been debated almost as long as the SEC has existed—on one side of the debate stood those who believed that proxy access should be mandatory for all public companies, and on the other stood those who believed that proxy access should be a matter of private ordering.

SEC’s Mandatory Proxy Access Rule. In 2009, the SEC proposed a mandatory proxy access rule—Rule 14a-11—and related amendments to its rules governing shareholder proposals. The SEC adopted these rules as final in 2010 following passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which included express authorization for the SEC to act on proxy access. Following a court challenge brought by the Business Roundtable and the U.S. Chamber of Commerce, the SEC stayed its proxy access rules.

Private Ordering. In 2011 the U.S. Court of Appeals for the District of Columbia Circuit vacated the SEC’s mandatory proxy access rule, Rule 14a-11, but the court challenge left untouched the SEC’s amendment to Rule 14a-8(i)(8) that removed the previous “relates to an election” barrier to shareholder proxy access proposals. The amendment to Rule 14a-8(i)(8), which became effective in 2011, provides the vehicle that has allowed “private ordering” of proxy access through the shareholder proposal process. In the 2015 proxy season, private ordering resulted in over 100 shareholder proxy access proposals, almost all of which included the same terms as the vacated SEC rule: a shareholder or group of shareholders (with no specified limit on group size) owning at least 3% of the company’s securities for at least 3 years can include nominees representing up to 25% of the board in the company’s proxy materials.

Developing Trends That Will Affect the 2016 Proxy Season

The pattern of shareholder proposals in 2015 may change in the 2016 proxy season as shareholders give greater scrutiny to the details of proxy access implementation other than minimum ownership thresholds and holding periods, including limits on the size of a nominating group. In addition, the stakes for the 2016 proxy season have also been raised by signals from proxy advisory services that they may recommend votes against directors for lack of responsiveness to shareholders if a company fails to implement proxy access substantially in accordance with the terms of a majority-approved shareholder proxy access proposal, if a company presents a competing management proposal or if a company implements an access bylaw with terms disfavored by the advisory service.

As discussed further below, one tool previously available to companies for shaping the private ordering of proxy access—the SEC no-action process for excluding directly conflicting or substantially implemented shareholder proposals—may be less useful in the 2016 proxy season. On October 22, 2015 the Staff of the SEC issued [Staff Legal Bulletin 14H](#), its long-awaited guidance on the scope and application of no-action relief on directly conflicting proposals under Rule 14a-8(i)(9). SLB 14H effectively renders the rule useless for challenging shareholder proxy access proposals. The SEC Staff has also recently signaled that its interpretation of the Rule 14a-8(i)(10) substantial implementation grounds may be narrowing, leaving uncertain the utility of this exclusion to companies pondering the appropriate strategy with respect to proxy access.

Formulating a Strategic Plan

In light of these developments, companies face two main sets of alternatives in preparing for proxy access in the 2016 proxy season:

- They should consider whether to adopt proxy access proactively in advance of the 2016 proxy season or take a wait-and-see approach.
- They should consider how to respond if they receive a shareholder proxy access proposal.

Advance Adoption Versus Wait-and-See Approach. Companies generally have not adopted proxy access unless they have first received a proposal or a request from shareholders, and we believe many companies will conclude that there is little to be gained from adopting proxy access proactively.

- **Advance Adoption.** Companies can proactively adopt a conciliatory bylaw with terms that include appropriate safeguards and are also favored by shareholder proponents in the hope of heading off a shareholder proposal. Alternatively, companies can take a more aggressive approach and proactively adopt a bylaw with terms that might be disfavored by shareholder proponents (such as limitations on group size), with the goal of locking in terms that the company believes provide the most appropriate protections

for the company, heading off or reducing support for a competing shareholder proposal, or enabling the company to exclude the shareholder proposal under SEC no-action rules as substantially implemented. However, past experience demonstrates that shareholders are still likely to submit a proposal seeking to modify disfavored terms in a company's existing bylaws. In the 2015 proxy season, shareholder proposals passed at four companies that had existing access bylaws, and as noted above, the SEC no-action relief on substantial implementation grounds may not be available.

- **Wait-and-See Approach.** The wait-and-see approach provides several advantages, including that the company retains the flexibility to respond in light of the specifics of the shareholder proposal, and it avoids the possibility of adopting a bylaw that is more liberal than a shareholder would propose or more restrictive than a shareholder would accept. In addition, waiting provides more time to monitor developing market trends.
- **Alternatives for Responding to a Proxy Access Proposal.** A company that receives a proxy access proposal has the following tactical choices:
 - **Simply Oppose.** A company can submit the proposal to shareholders with an opposing board statement. This decision should be supported by a vote analysis and shareholder engagement. If the proposal passes, the board may later receive negative voting recommendations if it does not implement the proposal in a manner deemed responsive by the proxy advisory services.
 - **Be Neutral or Support.** A company can submit the proposal to shareholders, with a neutral or supporting board statement, perhaps in exchange for revisions to the proposal favored by the company.
 - **Include a Competing Management Proposal.** A company can include the shareholder proposal and a competing management proposal. This approach may confuse shareholders and result in the adoption of two proposals that cannot be reconciled. However, of the seven instances in which companies presented competing proposals in the 2015 proxy season, none resulted in shareholder approval of both proposals. Three management proposals passed, three shareholder proposals passed, and in one instance both proposals failed.
 - **Negotiate in Exchange for Commitment to Adopt.** A company can prepare a draft bylaw or summary of terms acceptable to the company and palatable to shareholders, and negotiate for withdrawal in exchange for a commitment to adopt a proxy access bylaw.
 - **Adopt a Bylaw and Seek Exclusion.** A company can prepare a draft bylaw acceptable to the company and, after adoption by the board, seek SEC no-action relief to exclude the shareholder proposal on substantial implementation grounds.

The company's choices will depend on its shareholder profile, any governance issues that may trigger access proposals or affect shareholder voting, the board's views on proxy access, the company's analysis of the costs and benefits of resisting what may become a persistent governance issue, and the potential for negative director vote recommendations by proxy advisory services.

Other Considerations. Companies should also weigh the following factors:

- There is as yet no consensus among institutional investors on the benefits or preferred terms of proxy access, and proxy access is untested—we are not aware of any proxy access nominees to date.
- The impact of proxy access on corporate governance may be largely symbolic if, as expected, it will be seldom used. Activist investors are unlikely to use proxy access because of limitations such as the no control intent requirement, the significant holding period requirement and limitations on nominee support statements. Institutional investors may find it difficult to meet the percentage ownership thresholds and to find candidates who are willing to be part of a contested election contest.

Common Terms in Proxy Access Bylaws and Developing Trends

There is no one-size-fits-all approach to proxy access. In considering implementation of a proxy access bylaw, companies should select terms that are appropriate, in light of developing market trends, for the company's size, business, shareholder profile and governance structure. The following summary highlights key terms of proxy access bylaws implemented by companies through October 2015, including trends for bylaws adopted since August 1, 2015.

- **Ownership Threshold—3% Most Common.** All shareholder proposals in the 2015 proxy season included a 3% ownership threshold, as did the vast majority of proxy access bylaws implemented in 2015. Only 11 companies implementing proxy access in 2015 included a 5% threshold. Three of these companies re-amended their bylaws to reduce the threshold to 3% after a subsequent 3% shareholder proposal passed. Institutional Investor Services (ISS) conducted a policy survey announced in September 2015, [the 2015-2016 ISS Global Policy Survey Summary of Results](#) (discussed below), that indicates that ISS may recommend against directors for non-responsiveness if a shareholder proxy access proposal with a 3% ownership threshold receives majority support and a board adopts bylaws with a threshold in excess of 3%. In August 2015, the Council of Institutional Investors published a [paper](#) that criticizes an ownership threshold higher than 3% as a “troublesome” proxy access bylaw provision.
- **Ownership Period—Three Years Most Common.** All shareholder proposals in the 2015 proxy season and all companies implementing proxy access in 2015 had a three-year ownership period.

- **Shareholder Group Limit—20 Most Common.** Almost all shareholder proposals in the 2015 proxy season were silent with respect to limits on the number of shareholders that can be aggregated to form a nominating group. Vacated SEC Rule 14a-11 did not place a limit on group size. The vast majority of access bylaws implemented by companies in 2015 limited the size of nominating groups to 20 shareholders, with the next most common setting the group limit at 15 shareholders (three instances) and 10 shareholders (five instances). The September 2015 ISS policy survey results recognize this trend, indicating that ISS may recommend against directors for non-responsiveness if a board adopts bylaws with an aggregation limit of less than 20 shareholders in a nominating group. The Council of Institutional Investors, on the other hand, criticizes any limit on the number of shareholders that may form a group.
- **Cap on Number of Access Nominees—20% Most Common, Trend for Greater of 20% or Two Directors.** Almost all shareholder proposals in the 2015 proxy season limited access nominees to 25% of the board, which was also the limit in vacated SEC Rule 14a-11. Approximately three-fourths of the proxy access bylaws implemented by companies in 2015 had a cap of 20%, with the remainder generally set at 25%. The September 2015 ISS policy survey results recognize this trend, indicating that ISS may recommend against directors for non-responsiveness if a board adopts bylaws with a cap of less than 20% of the board. The Council of Institutional Investors, on the other hand, criticizes any provision that could make fewer than two seats available for access nominees. A growing trend that began in August 2015 was to provide for a cap of the greater of 20% of the board or at least two directors. Half of the proxy access bylaws implemented beginning in August 2015, and 72% beginning in October 2015, had this structure.
- **Loaned Shares—Most Common to Include if Recallable.** Proxy access bylaws typically require that a nominating shareholder hold full economic ownership of and voting and investment control over the shares. Although many proxy access bylaws exclude loaned shares, the majority treat loaned shares as owned if they are recallable (typically within three business days). Of the proxy access bylaws implemented beginning in August 2015, approximately 90% count recallable loaned shares, and over 40% of those require that the shares be recalled as of the date of the shareholder notice through the date of the annual meeting. Vacated SEC Rule 14a-11 counted loaned shares toward a shareholder's ownership if the shareholder had a right to recall the loaned shares and would recall the shares upon being notified that its nominee would be included in the company's proxy materials.
- **Third-Party Compensation of Access Nominee—Most Common to Permit but Require Disclosure.** While a few proxy access bylaws implemented in 2015 prohibit third-party compensation of access nominees outright, the most common approach is to prohibit any third-party compensation that is not disclosed to the company. Of the proxy access bylaws implemented beginning in August 2015, 84% follow the disclosure approach and only 13% prohibit compensation, with the remainder being silent on the

topic. The September 2015 ISS policy survey results indicate that ISS may recommend against directors for non-responsiveness if a board adopts bylaws with restrictions on third-party compensation. The Council of Institutional Investors also disfavors restrictions on “candidacy fees.”

- **Renomination Restrictions—Almost Universal.** Almost all proxy access bylaws implemented in 2015 provide that access nominees who fail to receive at least 25% of the votes cast should be precluded from renomination for some period, typically two years. The September 2015 ISS policy survey results indicate that ISS may recommend against directors for non-responsiveness if a board adopts bylaws with renomination restrictions. The Council of Institutional Investors also disfavors renomination restrictions.
- **Notice Deadline—Most Common Window Is 120-150 Days.** Most proxy access bylaws implemented in 2015 have a notice period for an access nomination of no earlier than 150 days and no later than 120 days prior to the anniversary of the release of the prior year’s proxy statement, which was the window provided in vacated SEC Rule 14a-11. Traditional advance-notice bylaws include more variation in the window period, with the most common being 90-120 days prior to the anniversary of the prior year’s annual meeting date. The longer proxy access notice window would accommodate the additional time involved in processing proxy access nominations. The September 2015 ISS policy survey results indicate that ISS may recommend against directors if a board extends the notice window in its advance-notice bylaw in connection with implementation of proxy access.

Proxy Advisory Firm Policies and Institutional Investor Support for Proxy Access

ISS 2015 Proxy Season Policies. Starting with the 2015 proxy season, ISS adopted a policy of generally recommending in favor of shareholder and management 3% / 3-year proxy access proposals with minimal or no limits on the number of shareholders that may form a nominating group and a cap on access nominees generally set at 25% of the board (described in the [2015 ISS FAQ](#)). The policy also called for a review for reasonableness of any other restrictions on the right of proxy access and for recommendations against directors of a company that unilaterally omits a shareholder proposal unless the company has taken steps to implement proxy access on terms consistent with the shareholder proposal. Pursuant to this policy, ISS recommended voting for all 83 shareholder proxy access proposals for which it issued a report in the 2015 proxy season and recommended voting against 7 of the 11 management proposals.

- **ISS 2015-2016 Policy Survey.** In September 2015, ISS announced findings from its 2015-2016 annual policy survey that signaled changes to ISS proxy access policies in the 2016 proxy season. The survey indicates that ISS may recommend against directors if a shareholder proxy access proposal receives majority support and a board adopts bylaws with restrictions not contained in the proposal, such as an

ownership threshold in excess of 3%, an ownership duration of greater than 3 years, an aggregation limit of less than 20 shareholders in a nominating group, a cap on proxy access nominees of less than 20% of the board, renomination restrictions, restrictions on third-party compensation, and information disclosures more extensive than required for company nominees. In addition, ISS may consider an extension of the general advance notice deadline/window to match the proxy access deadline/window a “unilateral” bylaw amendment that could result in a negative board recommendation. Although not part of the policy survey, these same positions may carry over to recommendations on proxy access proposals. ISS has stated that it expects to release its final policy updates for the 2016 policy season on November 18, 2015.

In November 2015, ISS announced that it will now include in its QuickScore rating methodology a new “zero-weight” factor relating to whether a company permits proxy access. ISS will track, for information purposes only, the minimum ownership threshold and holding period, the maximum number of shareholders that can constitute a nominating group and the maximum percentage or number of board seats open to proxy access nominees. As it has in the past with other unweighted items, ISS in the future may change proxy access from a zero-weight to a weighted QuickScore factor.

Glass Lewis 2015 Proxy Season Policies. The Glass Lewis proxy access policy for the 2015 proxy season provided for a case-by-case review of a shareholder proxy access proposal and the company’s response, including any company alternative proposal, considering the following factors:

- Company size
- Board independence
- Diversity of skills
- Experience, background and tenure
- Shareholder proponent and rationale for the proposal
- Proposal’s ownership and holding period thresholds (although the policy does not specify a preferred percentage)
- Shareholder base in percentage of ownership and type of shareholder
- Responsiveness to shareholders
- Company performance and steps taken to improve poor performance
- Existence of anti-takeover protections
- Opportunities for shareholder action (by written consent or through a right to call a special meeting)

Glass Lewis also indicated in [its update on proxy access developments](#) that in limited cases it may recommend against certain directors if a management proposal varies materially from the shareholder proposal without a sufficient rationale. During the 2015 proxy season, Glass Lewis generally recommended voting for proxy access shareholder proposals, and it recommended voting against 6 of the 11 management proxy access proposals for

which it issued a report. Any updates to the Glass Lewis policies for the 2016 proxy season will likely be issued in November 2015.

Institutional Investor Positions in the 2015 Proxy Season and Post-Season Developments

Although many institutional investors generally supported proxy access in the 2015 season, some generally opposed it, and policies varied widely, as described below. Retail investors generally opposed proxy access proposals, with only 15% voting in favor of proxy access in 2015, compared to 61% for institutional investors. However, the retail investor voting turnout is notoriously low, with approximately 30% typically voting compared to 90% for institutional investors.

- **Vanguard.** Considers on a case-by-case basis, but generally supports proxy access giving a shareholder or group of shareholders holding 5% of the outstanding shares for at least 3 years the right to nominate up to 20% of the board, but may support different thresholds based on a company's other governance provisions and other relevant factors.
- **Fidelity.** Opposes proxy access, generally voting against management and shareholder proposals.
- **BlackRock.** Considers on a case-by-case basis but generally supports proxy access if the proposal does not stipulate overly restrictive or onerous parameters for use and if it also provides assurances that the mechanism will not be subject to abuse by short-term investors, investors without a substantial investment in the company or investors seeking to take control of the board; generally supports 3% / 3-year proposals.

On October 7, 2015, BlackRock announced that it will submit a management proxy access proposal in its 2016 proxy statement to permit a group of up to 20 shareholders with full economic ownership of at least 3% for at least 3 years to nominate up to 20% of the board.

- **State Street Global Advisors.** Considers on a case-by-case basis but generally supports proxy access, taking into consideration ownership thresholds and holding duration, the number of directors that shareholders may nominate each year, company performance, governance structure, shareholder rights and board performance.

On October 15, 2015, State Street adopted a proxy access bylaw that permits a group of up to 20 shareholders with 3% ownership for at least 3 years to nominate up to 20% of the board.

- **California Public Employees' Retirement System (CalPERS).** Announced that proxy access was one of its strategic priorities in the 2015 proxy season and that it was supporting proxy access proposals at 100 companies; generally supports 3% / 3-year proposals.

- **California State Teachers' Retirement System (CalSTRS).** Supports proxy access allowing an investor or group of investors owning 3% of the company's voting stock for 3 years to nominate a minority of the directors.
- **TIAA-CREF.** Generally supports proxy access and in the 2015 proxy season engaged in a letter-writing campaign to its top 100 holdings asking them to implement proxy access at the 3% / 3-year threshold.
- **T. Rowe Price.** Generally will vote for shareholder proposals for proxy access with a 3% ownership and a minimum 2-year/maximum 3-year holding period, with no significant impediments to aggregate holdings.

This area will continue to develop, as updated institutional investor policies for the 2016 proxy season emerge later this year or in early 2016.

Council of Institutional Investors Proxy Access Paper. In August 2015, the Council of Institutional Investors, a nonprofit association of corporate, public and union employee benefit funds and endowments, issued a paper, offering guidelines describing seven proxy access provisions it considers "troublesome" that "significantly impair shareowners' ability to use proxy access, or even render access unworkable":

1. An ownership requirement of 5% (the Council of Institutional Investors supports 3%)
2. A minimum of less than two proxy access candidates
3. Any limits on aggregation for a shareholder nominating group
4. The exclusion of loaned shares
5. Requirements that the nominating shareholder hold the shares after the annual meeting
6. Restrictions on renominations of proxy access nominees who fail to receive a specific minimum percentage of votes
7. Prohibitions on third-party compensation of access nominees

Institutional Investor Campaigns. The campaigns by institutional investors described above are expected to continue in the 2016 proxy season. The United Brotherhood of Carpenters reportedly has sent a letter to 50 companies seeking a "triggered" proxy access right that would apply only if a company that has a majority-voting standard and director-resignation policy did not accept the resignation of an incumbent director who failed to receive majority support.

Individual Investor Proposals. Individual investors, who submitted a significant number of proposals in the 2015 proxy season, will continue to be active in 2016. James McRitchie, an individual governance activist who submitted several access proposals in the 2015 proxy season, has announced that he will be submitting proxy access proposals with a revised template in the 2016 proxy season, which includes the following terms: no limit on the number of shareholders that may form a group, a minimum of two board seats for access nominees, inclusion of recallable loaned stock in the calculation of ownership and no restrictions on renominations.

Limited SEC No-Action Relief

As noted above, the SEC no-action process for excluding directly conflicting or substantially implemented shareholder proposals will be of limited usefulness in challenging shareholder proposals in the 2016 proxy season.

Directly Conflicting Proposals. The SEC Staff historically had issued no-action letters concurring in the exclusion of shareholder proxy access proposals under Rule 14a-8(i)(9) even when the management proposal included terms substantially different from those in the shareholder proposal. In 2014, the Staff granted no-action relief to Whole Foods on the basis that a 3% for 3 years shareholder proposal directly conflicted with the Whole Foods management proposal for 9% for 5 years. Over 20 companies quickly sought similar no-action relief, resulting in an investor outcry. In January 2015, SEC Chair Mary Jo White responded to this development by directing the Staff to review the proper scope and application of Rule 14a-8(i)(9) and to report to the SEC on its review. In response the Staff revoked the Whole Foods no-action relief and ceased granting all no-action relief under Rule 14a-8(i)(9) during the pendency of the review.

In Staff Legal Bulletin 14H, the Staff greatly narrowed the scope of Rule 14a-8(i)(9), noting that the Staff will focus on whether "a reasonable shareholder could not logically vote in favor of both proposals, *i.e.*, a vote for one proposal is tantamount to a vote against the other proposal" as "they are, in essence, mutually exclusive proposals." SLB 14H gives as an example that a 5% / 5-year management proxy access proposal would not be deemed to directly conflict with a 3% / 3-year shareholder proposal. Whether a shareholder proposal is precatory or precedes a management proposal on the same topic will not impact the Staff's assessment of excludability. While the Staff agrees that this formulation may pose a "higher burden for some companies seeking to exclude a proposal to meet" than had been the case previously, it believes that the interpretation is "most consistent with the history of the rule and more appropriately focuses on whether a reasonable shareholder could vote favorably on both proposals or whether they are, in essence, mutually exclusive proposals." This guidance is not surprising in light of SEC Chair White's prior statements (including in her June 2015 speech to the Society of Corporate Secretaries and Governance Professionals) that in instances where conflicting proposals were included in 2015 proxy statements, "shareholders were able to sort it all out and express their views."

Substantial Implementation. It is also unlikely that the SEC Staff will be granting no-action relief on substantial implementation grounds where a company has already implemented proxy access if the company's bylaw differs in any material respect from the shareholder proposal. Under Rule 14a-8(i)(10), the SEC Staff will grant no-action relief concurring in the exclusion of a shareholder proposal if the company has "substantially" implemented the proposal, even if not in exactly the same manner as set forth by the proponent, so long as the company's policies, practices and procedures compare favorably with the guidelines of the proposal.

In March 2015, the Staff granted no-action relief to General Electric concurring in the exclusion of a shareholder proxy access proposal for 3% for 3 years for up to 20% of the board with no limit on the number of shareholders that could constitute a nominating group, in light of General Electric's earlier adoption of proxy access with the same 3% for 3 years for up to 20% of the board, but with a limit of 20 shareholders that could constitute a nominating group. It is unclear how far the General Electric precedent will extend in the 2016 proxy season if, as expected, shareholder proponents specify additional terms that differ from the provisions in the company bylaw.

The SEC Staff has signaled in recent conferences that in circumstances where a company has already adopted proxy access, it is unlikely to grant substantial implementation no-action relief to a company seeking to exclude a proxy access shareholder proposal if the company's bylaw differs in any material respect from the shareholder proposal. What the Staff will consider a material difference is uncertain.

Conclusion

As a company considers its response to proxy access in the 2016 proxy season, it should focus on its shareholder profile, trends in market practice, developing proxy advisor and institutional investor positions, and changes in SEC guidance. The company should also consider whether it has any governance issues that may trigger access proposals or affect shareholder voting.

Additional Information

Additional information on proxy access and discussions of recent speeches, cases, laws, regulations and rule proposals of interest to public companies are available at Perkins Coie's [website](#).

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Appendix A
2015 PROXY ACCESS BYLAWS
(through November 16, 2015)

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
BOARD ADOPTION PRIOR TO MAJORITY-APPROVED SHAREHOLDER PROPOSAL												
3M Company/ Delaware <u>Bylaw</u> Nov. 2015	3%	3 years	Greater of 20% or 2	20	90-120 prior to annual meeting anniversary /same	If recall- able and recalled	Yes/No	No comp. for service as director that is not disclosed	Silent	Reduces cap	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
Aflac Incorpo- rated/ Georgia <u>Bylaw</u> Nov. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /90-120 prior to PS release date anni- versary	If recall- able within 3 days and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
Altria Group, Inc./ Virginia <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /same	If recall- able within 3 days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting

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Arch Coal/ Delaware <u>Bylaw</u> Feb. 2015	5%	3 years	20%	20	120-150 prior to PS release date anni- versary /70-90 prior to annual meeting anniversary	Silent	Yes/No	No comp. for service as director that is not disclosed	Yes	Cannot nominate the same nominee both through proxy and advance notice	No	Implemented prior to 2015 annual meeting; NYC s/h pro- posal failed at 2015 annual meeting (3%/3 year/25%/ silent on group size)
Archer- Daniels- Midland Com- pany/ Delaware <u>Bylaw</u> Nov. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /60-90 prior to annual meeting anniversary	Silent	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
Bank of Amer- ica/ Delaware <u>Bylaw</u> Mar. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /75-120 prior to annual meeting anniversary	If recall- able within 3 days	Yes/Yes	No comp. as nominee or for service as director that is not disclosed	Yes (<20%)	Reduces cap	No	Implemented after discussions with sharehold- ers
Bank of New York Mellon Corp./ Delaware <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to PS release date anni- versary	If recall- able and recalled	Yes/No	No comp. for service as director that is not disclosed	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Biogen, Inc./ Delaware <u>Bylaw</u> Mar. 2015	3%	3 years	25%	20	120-150 prior to PS release date anni- versary /90-120 prior to PS release date anni- versary	Silent	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded if a stock- holder will nominate more than 50% of directors via ad- vance notice	3 years	Implemented before 2015 annual meeting; individual s/h proposal with- drawn
Broadridge Financial/ Del- aware <u>Bylaw</u> July 2015	3%	3 years	25%	20	References advance notice peri- od /120-150 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder; no proxy access if total num- ber of nominees by any share- holder exceeds 30%	3 years	Implemented in July 2015; had received individ- ual s/h proposal in June 2015 with same terms except silent on size of group; s/h withdrew pro- posal after com- pany filed no- action request
Cabot Oil & Gas/Delaware <u>Bylaw</u> Mar. 2015	5%	3 years	20%	10	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	Silent	Yes/Yes	Prohibited	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	Silent	Implemented prior to 2015 annual meeting; subsequent NYC s/h proposal failed at 2015 annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Capital One Financial/ Del- aware Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented after engage- ment with s/hs owning substan- tial number of shares
CF Industries/ Illinois Bylaw Oct. 2015	3%	3 years	25%	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able within 5 business days	Yes/Yes	Disclose	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented prior to 2015 annual meeting w/ 5%/ 3 year/20%; subsequent NYC s/h proposal passed at 2015 annual meeting; revised to 3%/3 year/25% after annual meeting
Clorox Corp./ Delaware Bylaw Aug. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able within 5 business days	Yes/No	No comp. for service as director that is not disclosed	Yes (<20%)	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after s/h proposal withdrawn

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Coca-Cola/ Delaware <u>Bylaw</u> Sep. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /120 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2015 annu- al meeting; s/h proposal failed at 2015 annual meeting
CSX Corp./ Virginia <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20	120 prior to PS release date anni- versary /120 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
FirstMerit Corp./ Ohio <u>Bylaw</u> Apr. 2015	3%	3 years	20%	20	90 days prior to specified date /same	Silent	Yes/Yes	Silent	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Mgt. binding bylaw proposal passed; conflict- ing s/h proposal was withdrawn

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
General Elec- tric/ New York Bylaw Feb. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /same	If recall- able within 3 business days	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after engaging with a number of shareholders; subsequently obtained SEC no-action relief to exclude individu- al s/h proposal on Rule 14a- 8(i)(10) substan- tial implementa- tion grounds (s/h proposal had same terms ex- cept silent on size of group)
Goldman Sachs Group/ Delaware Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	15	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/Yes	Disclose	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; s/h proposal failed at 2014 annual meeting
H&R Block/ Missouri Bylaw June 2015	3%	3 years	20%	20	90-120 prior to annual meeting anniversary /same	If recall- able within 3 business days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes	Reduces cap	Silent	Individual s/h proposal with- drawn

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
HCP, Inc./ Maryland <u>Bylaw</u> Feb. 2015	5%	3 years	20%	10	120-150 prior to PS release date anni- versary /60-90 prior to annual meeting anniversary	Silent	Yes/Yes	Silent	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented prior to 2015 annual meeting; subsequent NYC s/h proposal passed at 2015 annual meeting
Kindred Healthcare, Inc./ Delaware <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20 (25 if Com- pany value > \$2.5 million)	120-150 prior to PS release date anni- versary /60-90 prior to annual meeting anniversary	If recall- able and recalled	Yes/No	No comp. as nominee or for service as director that is not disclosed	Silent	Reduces cap	2 years	Implemented prior to 2015 annual meeting; s/h proposal withdrawn
Level 3 Com- munications, Inc./ Delaware <u>Bylaw</u> Nov. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	Silent	Yes/No	Silent	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	2 years	Implemented after 2015 annu- al meeting; s/h proposal failed at 2015 annual meeting
McKesson Corp./ Delaware <u>Bylaw</u> July 2015	3%	3 years	20%	20	120-150 prior to annual meeting anniversary /90-120 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Mgt. binding bylaw proposal passed; had committed in June of prior year to submit to s/h vote; required approval by ma- jority of outstand- ing shares

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Merck & Co./ New Jersey <u>Bylaw</u> July 2015	3%	3 years	20%	20	120-150 prior to annual meeting anniversary /same	If recall- able within 3 business days	Yes (at least until the next annual meeting)	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented after 2015 annu- al meeting, no s/h proposal presented at annual meeting
Microsoft/ Washington <u>Bylaw</u> Aug. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented prior to 2015 annual meeting; s/h proposal w/non-standard terms failed at 2014 annual meeting
Mondelez Int'l, Inc./ Virginia <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to annual meeting anniversary /at least 120 prior to PS release date anni- versary	If recall- able within 3 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
Morgan Stan- ley/ Delaware <u>Bylaw</u> Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
New York Community Bancorp/ Del- aware <u>Bylaw</u> Mar. 2015	5%	3 years	20%	10	120-150 prior to PS release date anni- versary /at least 90 prior to meeting date	If recall- able	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented prior to 2015 annual meeting; described share- holder outreach; subsequent NYC s/h proposal failed at 2015 annual meeting
Noble Energy/ Delaware <u>Bylaw</u> Oct. 2015	5%	3 years	20%	20	120-150 prior to PS release date anni- versary /same	Silent	Yes/Yes	Prohibited	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2015 annu- al meeting; s/h proposal failed at annual meeting
PayPal Hold- ings, Inc./ Del- aware <u>Bylaw</u> <u>Articles of In- corporation</u> July 2015	3%	3 years	20%	15	90-120 prior to annual meeting anniversary /same	Silent	Yes/No	No comp. for service as director that is not disclosed	Yes (<10%)	Reduces cap	2 years	Implemented as part of the separa- tion from eBay; included in arti- cles and bylaws of new company
Philip Morris Int'l Inc./ Vir- ginia <u>Bylaw</u> Sep. 2015	3%	3 years	20%	15	120-150 prior to PS release date anni- versary /120-150 prior to PS release date anni- versary	If recall- able within 3 business days	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented after May 2015 annual meeting, no s/h proposal presented at annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Priceline Group/ Delaware Bylaw Nov. 2015	3%	3 years	25%	None	120-150 prior to annual meeting anniversary /90-120 prior to annual meeting anniversary	If recall- able within 5 business days	Yes/No	No comp. for service as director that is not disclosed	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	Silent	Implemented prior to 2015 annual meeting; NYC s/h pro- posal passed at 2015 annual meeting; amend- ed July 2015 to reflect NYC pro- posal terms (3%/ 3 year/25%, plus eliminated limit on size of group); further amended Nov. 2015: 500 word limit applies separately to each nominee; time for loaned shares to be recalled extend- ed from 3 to 5 business days; nominating s/h just statement of intention with respect to hold- ing the shares following the annual meeting rather than one- year hold re- quirement

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Progressive Corp./ Ohio <u>Bylaw</u> Aug. 2015	3%	3 years	20%	20	120 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recall-able and recalled	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes	Reduces cap	2 years	Implemented after 2015 annual meeting; no s/h proposal presented at annual meeting
Prudential Financial/ New Jersey <u>Bylaw</u> Mar. 2015	3%	3 years	20%	20	120-150 prior to annual meeting anniversary /same	If recall-able within 3 business days	Yes/Yes	No comp. as nominee or for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any shareholder	Silent	Implemented after engaging with shareholders
Regency Centers Corp./ Florida REIT <u>Bylaw</u> July 2015	3%	3 years	25%	1	120 prior to PS release date anniversary /same	Silent	Yes/No	Prohibited	Yes	Excluded for any advance notice nominee by any shareholder	Silent	Implemented after 2015 annual meeting; described as one of several governance changes representing "best practices;" no s/h proposal presented at annual meeting
Rite Aid Corp./ Delaware <u>Bylaw</u> Apr. 2015	3%	3 years	20%	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	Silent	Yes/Yes	No comp. as nominee or for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any shareholder	2 years	Implemented before 2015 annual meeting; subsequent individual s/h proposal failed at 2015 annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
SBA Commu- nications Corp./ Florida <u>Bylaw</u> July 2015	5%	3 years	20%	10	120-150 prior to annual meeting anniversary /same	No	Yes/No	Prohibited	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Conflicting mgt. advisory pro- posal passed; implemented July 2015; com- peting NYC s/h proposal failed
Spectra Ener- gy Corp./ Delaware <u>Bylaw</u> Nov. 2015	3%	3 years	20%	20	90-120 prior to annual meeting anniversary /90-120 prior to annual meeting anniversary	If recall- able within 3 business days and recalled	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes	Reduces cap; can- not nomi- nate the same nominee both through proxy and advance notice	3 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
State Street Corp./ Massachusetts <u>Bylaw</u> Oct. 2015	3%	3 years	20%	20	120-150 prior to annual meeting anniversary /60-90 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes	Reduces cap; can- not nomi- nate the same nominee both through proxy and advance notice	Silent	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting
Target Corpo- ration/ Minnesota <u>Bylaw</u> Nov. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90 prior to annual meeting anniversary	If recall- able within 3 business days	Yes/	No comp. as nominee that is not dis- closed; comp for service as a director prohibited	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; no s/h proposal presented at annual meeting

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
United Natural Foods/ Delaware Bylaw Oct. 2015	3%	3 years	20%	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recall-able and recalled	Yes/Yes	Prohibited	Yes	Reduces cap; cannot nominate the same nominee through both proxy and advance notice	3 years	Implemented before 2015 annual meeting; no s/h proposal presented at 2014 annual meeting
United Technologies/ Delaware Bylaw Sep. 2015	3%	3 years	20%	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recall-able	Yes/No	No comp. as nominee or for service as director that is not disclosed	No	Reduces cap	2 years	Implemented after 2015 annual meeting; no s/h proposal presented at annual meeting
United Therapeutics/ Delaware Bylaw Apr. 2015	3%	3 years	20%, in-crease to 25% if board below 10	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recall-able and recalled	Yes/No	Disclose	Yes	Excluded for any advance notice nominee by any shareholder	For as long as incumbent director's term	Implemented before 2015 annual meeting; s/h proposals were withdrawn

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
VCA, Inc./ Del- aware Bylaw Oct. 2015	5%	3 years	20%	20	120 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented after 2015 annu- al meeting; NYC s/h proposal failed at 2015 annual meeting
VEREIT, Inc./ Maryland REIT Bylaw Aug. 2015	3%	3 years	25%	20	120 prior to PS release date anni- versary	If recall- able within 5 business days	Yes/No	Prohibited	Yes	Excluded for any advance notice nominee by any share- holder	As long as incumbent director is re- nominated by the board	Implemented before 2015 annual meeting; described in proxy statement as one of several governance im- provements adopted as a result of s/h en- gagement
Visa Inc./ Del- aware Bylaw Oct. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented following receipt of s/h proposal

Company/ State	Owner- ship %	Owner- ship Period	Max % of Board	Group Limit	Notice Deadline: Proxy Access /Advance Notice	Do Loaned Shares Count	Holding Period Through Annual Meeting/ One Year After	Third-Party Director Compensa- tion	Re- Nomination Restrictions if Less Than 25%	Proxy Access if Ad- vance Notice Nominee	Incumbent Access Directors Count Against Cap	Comments
Walgreens Boots Alliance, Inc./ Delaware <u>Bylaw</u> Oct. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /60-90 prior to annual meeting anniversary	If recall- able within 5 business days	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2015 annu- al meeting; s/h proposal failed at 2015 annual meeting
Whole Foods Market/ Texas <u>Bylaw</u> June 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /120 prior to PS release date anni- versary	If recall- able and recalled	Yes/Yes	Prohibited	Yes	Reduces cap; can- not nomi- nate the same nominee through both proxy and ad- vance notice	3 years	Implemented prior to resched- uled annual meeting; individ- ual s/h proposal with lower thresholds (3%/3 years/25% / silent on group size) was with- drawn; originally proposed 9%/5 years/10%

Yum! Brands/ North Carolina Bylaw Sep. 2015	3%	3 years	20%	20	120-150 prior to PS release date anni- versary /90 prior to annual meeting anniver- sary	If recall- able and recalled	Yes/Yes	No comp. as nominee or for service as director that is not dis- closed	Yes	Cannot nominate the same nominee through both proxy and advance notice	Silent	Negotiated with 3 largest s/hs to implement in spring of 2015 (individual s/h proposal with- drawn)
BOARD ADOPTION (OR BINDING BYLAW) AFTER MAJORITY-APPROVED SHAREHOLDER PROPOSAL												
American Elec- tric Power Company, Inc./ New York Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able within 5 business days	Yes/No	No comp. for service as director that is not disclosed	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting after engaging with shareholders; s/h proposal passed at 2015 annual meeting
Anadarko Pe- troleum/ Delaware Bylaw Sep. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /90-120 prior to annual meeting anniversary	If recall- able and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; NYC s/h proposal passed at 2015 annual meeting
AvalonBay Communities, Inc./ Maryland REIT Bylaw Nov. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anni- versary /same	If recall- able within 3 business days and recalled	Yes	No comp. for service as director that is not disclosed	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; NYC s/h proposal passed at 2015 annual meeting
Big Lots/ Ohio Proxy State- ment May 2015	3%	3 years	25%	No limit	120-150 prior to PS release date anni- versary		Yes/No	Prohibited	Yes			Mgt. binding bylaw proposal passed; s/h pro- posal passed in prior year

Boston Properties/ Delaware REIT Bylaw Feb. 2015	3%	3 years	25%	5	120 prior to PS release date anniversary /75-120 prior to annual meeting anniversary	Silent	Yes/No	Prohibited	Yes	Excluded for any advance notice nominee by any shareholder	Silent	Implemented after 2014 annual meeting; s/h proposal passed at 2014 annual meeting; subsequent s/h proposal failed at 2015 annual meeting
Chevron Corp./ Delaware Bylaw Sep. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anniversary /90-120 prior to PS release date anniversary	If recallable and recalled	Yes/No	Disclose comp. as nominee/prohibit comp. as director	Yes	Excluded for any advance notice nominee by any shareholder	Silent	Implemented after 2015 annual meeting; s/h proposal passed at 2015 annual meeting
Citigroup/ Delaware Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recallable within 3 business days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Silent	Reduces the cap	3 years	Implemented after 2015 annual meeting; individual s/h proposal passed at annual meeting (Citi supported s/h proposal after negotiating cap down from 25% to 20% of board)
Cloud Peak Energy Inc./ Delaware Bylaw Oct. 2015	3%	3 years	20%	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recallable and recalled	Yes/Yes	No comp. as nominee or for service as director that is not disclosed	Silent	Reduces cap; cannot nominate the same nominee through both proxy and advance notice	Silent	Implemented after extensive s/h outreach after 2015 annual meeting; s/h proposal passed and management proposal failed at 2015 annual meeting

ConocoPhillips/ Delaware Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recallable and recalled	Yes/Yes	Prohibited	Silent	Excluded for any advance notice nominee by any shareholder	3 years	Implemented after 2015 annual meeting; s/h proposal passed at annual meeting
DTE Energy Co./ Michigan Bylaw Sep. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to annual meeting anniversary /same	If recallable within 5 business days	Yes/No	No comp. for service as director that is not disclosed	No	Excluded if same shareholder makes advance notice nomination	Silent	Implemented after 2015 annual meeting; NYC s/h proposal passed at 2015 annual meeting
EOG Resources Inc./ Delaware Bylaw Sep. 2015	3%	3 years	20%	20	90-120 prior to PS release date anniversary /same	If recallable within 3 business days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes (<10%)	Reduces cap	2 years	Implemented after 2015 annual meeting; NYC s/h proposal (narrowly) passed at annual meeting
Equity Residential/ Maryland REIT Bylaw Oct. 2015	3%	3 years	20%	20	120 prior to PS release date anniversary /120-150 prior to PS release date anniversary	If recallable and recalled	Yes/No	Disclose	No	Excluded for any advance notice nominee by any shareholder	2 years	Implemented after 2015 annual meeting; s/h proposal passed at annual meeting
EQT Corp/ Pennsylvania Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recallable	Yes/No	No comp. for service as director that is not disclosed	Silent	Reduces cap	2 years	Implemented after 2015 annual meeting; NYC s/h proposal passed at annual meeting

Hasbro/ Rhode Island Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	90-120 prior to annual meeting anniversary /same	If recall- able within 3 business days	Yes/No	No comp. as nominee or for service as director that is not disclosed	Yes	Excluded if same share- holder makes advance notice nomina- tion	Silent	Implemented after 2015 annu- al meeting; s/h proposal passed at annual meet- ing
Kilroy Realty/ Maryland REIT Bylaw Feb. 2015	5%	3 years	25%	10	120-150 prior to annual meeting anniversary /same	Silent	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2014 annu- al meeting; NYC s/h proposal passed at 2014 meeting; not challenged in 2015
Kohls Corpora- tion/ Wisconsin Bylaw Nov. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to annual meeting anniversary /120 prior to annual meeting anniversary	If recall- able within 5 business days and recalled	Yes/No	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	Silent	Implemented after 2015 annu- al meeting and discussions with s/h; s/h proposal passed at annual meeting
Marathon Oil Corp./ Delaware Bylaw Sep. 2015	3%	3 years	25%	20	90-120 prior to PS re- lease date anniversary /same	Silent	Yes/Yes	Prohibited	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	Silent	Amended bylaws adopted in 2014 (with 5% thresh- old) after 2015 annual meeting to align with NYC s/h proposal passed at 2015 annual meeting
McDonalds/ Delaware Bylaw Oct. 2015	3%	3 years	Greater of 20% or 2	20	90-120 prior to annual meeting anniversary /same	If recall- able within 5 business days	Yes/No	Silent	Silent	Reduces cap	2 years	Implemented after 2015 annu- al meeting; s/h proposal passed at annual meet- ing

Monsanto/ Delaware Bylaw June 2015	3%	3 years	20%	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	Silent	Yes/Yes	Prohibited	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	Silent	Implemented after 2015 annu- al meeting; indi- vidual s/h propos- al passed at 2015 annual meeting
SLM Corp./ Delaware Bylaw June 2015	3%	3 years	25%	20	90-120 prior to annual meeting anniversary /same	Silent	Yes/No	Silent	Yes	Cannot nominate the same nominee through both proxy and ad- vance notice	2 years	Mgt. binding bylaw proposal passed at 2015 annual meeting; s/h proposal passed in prior year
Southwestern Energy Com- pany/ Delaware Bylaw Nov. 2015	3%	3 years	Greater of 20% or 2	20	120-150 prior to PS release date anniversary /90-120 prior to annual meeting anniversary	If recall- able within 5 business days and recalled	Yes/Yes	No comp. for service as director that is not disclosed	Yes	Excluded for any advance notice nominee by any share- holder	3 years	Implemented after 2015 annu- al meeting; indi- vidual s/h propos- al passed at 2015 annual meeting
TCF Financial Corporation/ Delaware Bylaw Oct. 2015	3%	3 years	25%	20	120-150 prior to PS release date anniversary /60-90 prior to meeting date	Silent	Yes/Yes	Prohibited	Silent	Excluded for any advance notice nominee by any share- holder	2 years	Implemented after 2015 annu- al meeting; s/h proposal passed at annual meet- ing