

Reminder of the SEC's Shareholder Proposal Amendments Effective for 2022 Annual Meetings

September 20, 2021

by Cam C. Hoang and Kimberley R. Anderson

For those public companies soon to be receiving shareholder proposals for their upcoming annual shareholder meetings, please keep in mind that in September 2020, the SEC adopted amendments to Rule 14a-8. These amendments apply to any shareholder proposal submitted for an annual or special meeting to be held on or after January 1, 2022. However, the SEC may revisit this rulemaking and postpone their effectiveness pending further review. These amendments:

- Update the eligibility criteria that a shareholder must satisfy to have a shareholder proposal included in a company's proxy statement, though the current criteria are grandfathered for certain shareholders for meetings held prior to January 1, 2023;
- Require shareholder proponents to make themselves available for discussions with the company;
- Require shareholders appointing representatives to provide additional documentation;
- Provide that a single person may not submit multiple proposals at the same shareholders' meeting, whether as a shareholder or as a representative of a shareholder; and
- Increase the levels of required shareholder support a proposal must receive to be eligible for resubmission at the same company's future meetings.

The final rules also provide for a transition period that will allow certain shareholders to rely on the existing \$2,000/one-year ownership threshold for proposals submitted for an annual or special meeting to be held prior to January 1, 2023. These shareholders must have continuously held at least \$2,000 of the company's stock for one year as of the effective date of the amendments, and continuously maintain ownership of at least \$2,000 of such stock from the effective date of the amendments through the date the shareholder submits a proposal to such company.

We have provided a more detailed summary of the amendments below:

Shareholder Proposal Reform

Prior Rule	Adopted Rule (for Meetings Held on or
------------	---------------------------------------

Related People

- Cam C. Hoang
- Kimberley R. Anderson

Related Capabilities

- Corporate Governance & Compliance
- Capital Markets

	after January 1, 2022)
Rule 14a-8(b) requires a shareholder that wishes to have a proposal included in a company's proxy materials to have continuously held at least \$2,000 in market value, or 1 percent, of a company's securities entitled to vote on the proposal for at least one year as of the date the shareholder submits the proposal. (Grandfathered for certain shareholders for meetings held prior to 01.01.23)	Eligibility Criteria: Rule 14a-8(b): Amend the current ownership requirements to incorporate a tiered approach that provides three options for demonstrating a sufficient ownership stake in a company—through a combination of amount of securities owned and length of time held: • \$2,000 of the company's securities entitled to vote on the proposal for at least three years; • \$15,000 of the company's securities entitled to vote on the proposal for at least two years; or • \$25,000 of the company's securities entitled to vote on the proposal for at least one year. Aggregation of holdings for purposes of meeting the ownership requirements will not be permitted.
N/A	Shareholder Engagement: Rule 14a-8(b)(b)(iii): Require shareholder-proponents to identify specific dates and times (that are no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal) they can meet with the company in person or via teleconference to engage with the company with respect to the proposal
N/A	Additional Shareholder Documentation: Rule 14a-8(b)(iv): Require a shareholder who elects to use a representative to provide documentation to make clear that the representative is authorized to act on the shareholder's behalf and to provide a meaningful degree of assurance as to the shareholder's identity, role and interest in the proposal
Rule 14a-8(c) provides for a limitation of one proposal to each shareholder.	One Proposal Limit: Rule 14a-8(c) provides that a person may submit no more than one proposal, directly or

	indirectly, for the same shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
Rule 14a-8(i)(12) resubmission thresholds: 3% for matters voted on once, 6% for matters voted on twice and 10% for matters voted on three or more times in the last five years.	Resubmission Thresholds: Increase the current resubmission thresholds under Rule 14a-8(i)(12): 5% for matters voted on once, 15% for matters voted on twice and 25% for matters voted on three or more times in the last five years Adding a provision to allow companies to exclude proposals dealing with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years that would not otherwise be excludable under the 25% threshold if (i) the most recently voted on proposal received less than a majority of the votes cast and (ii) support declined by 10 percent or more compared to the immediately preceding shareholder vote on the matter (the "Momentum Requirement").