

## OVERVIEW

The SEC's 2010 Proxy Access Rule .....	3
Uptick in Shareholder Proxy Access Proposals in 2015 .....	3
<i>Companies Targeted for 2016</i> .....	4
Institutional Investor Support for Proxy Access .....	4
Proxy Advisory Firm Policies on Proxy Access .....	6
Grounds for Exclusion of Shareholder Proxy Access Proposals .....	9
<i>New SEC Guidance on Excludability of Directly Conflicting Shareholder Proposals</i> .....	10
Voting Results on Proxy Access Proposals in 2015 .....	11
Adoption of Proxy Access Provisions in 2015 and Typical Parameters ....	13
<i>A Moving Target – Amendments to Previously Adopted Provisions</i> .....	14
<i>Spotlight: Limitations on the Size of the Nominating Group</i> .....	18
Potential Impact of Proxy Access on Corporate Governance .....	18
<i>International Perspectives on Proxy Access</i> .....	19
Practical Considerations .....	20
Appendix – Proxy Access Provisions Adopted in 2015	
<i>Part A – Summary of Circumstances of Adoption</i> .....	24
<i>Part B – Select Terms of Proxy Access Provisions</i> .....	25

## Proxy Access in 2015 – The Year in Review

### And Looking Ahead to the 2016 Proxy Season

January 14, 2016

Through the collective efforts of large institutional investors, including public and private pension funds, and other shareholder proponents, shareholders are increasingly gaining the power to nominate a portion of the board without undertaking the expense of a proxy solicitation. By obtaining proxy access (the ability to include shareholder nominees in the company's own proxy materials), shareholders will have an additional lever to pull to influence board decisions.

More than 20% of companies in the S&P 500 have now adopted proxy access. We expect that proxy access will become a majority practice among S&P 500 companies in the next 2 to 3 years.

As a follow-up to our previous Sidley Updates on proxy access, this update presents the full year of 2015 data and reflects recent developments related to proxy access. We have also updated the Appendix which highlights, on a company-by-company basis, various terms of proxy access provisions adopted by 118 companies in 2015, including the terms adopted by 56 companies since we published our last Sidley Update on proxy access on November 4, 2015.

#### Key Highlights of Shareholder Proxy Access Proposals Voted on in 2015\*

- 91 proposals were voted on in 2015, up from 18 in 2014
- 55 passed (60% of the total) in 2015, up from 5 (28%) in 2014
- 36 did not pass (40% of the total) in 2015, compared to 13 (72%) in 2014
- Average percentage of votes cast in favor was 55% in 2015, up from 34% in 2014

\* Data points in this update with respect to proxy access proposals are derived from SharkRepellent.net, last accessed on January 12, 2016. All voting results in this update are calculated on the basis of votes cast "for" the proposal divided by the sum of votes cast "for" and "against" that proposal (not taking into account abstentions).

## Snapshot of Proxy Access Provisions Adopted in 2015

(See the Appendix for these and additional provisions, presented on a company-by-company basis)

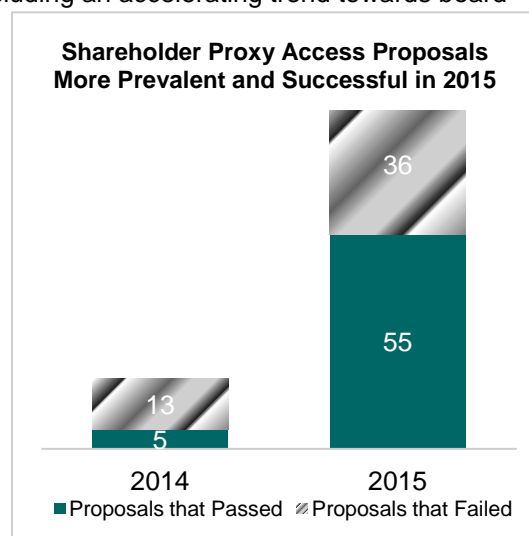
	Prevalence of Selected Alternatives	Shareholder Viewpoints*	Proxy Advisory Firm Policies and CII Position
Ownership Threshold and Duration	<ul style="list-style-type: none"> <li>3% / 3 years – 108/118 (92%); included in SEC vacated rule</li> <li>5% / 3 years – 10/118 (8%)</li> </ul>	<ul style="list-style-type: none"> <li>Most favor 3%</li> <li>Vanguard favors 5% but case-by-case</li> <li>Shareholder proposals more likely if company adopts at 5%</li> </ul>	<ul style="list-style-type: none"> <li>ISS and Glass Lewis support 3%</li> <li>CII supports 3% and views 5% as “troublesome”</li> </ul>
Nominee Limit (Max. % of Board)	<ul style="list-style-type: none"> <li>20% cap – 45/118 (38%)</li> <li>Greater of 2 or 20% – 59/118 (50%)</li> <li>25% cap – 14/118 (12%); included in SEC vacated rule</li> </ul>	<ul style="list-style-type: none"> <li>Most favor 20-25%</li> </ul>	<ul style="list-style-type: none"> <li>ISS and Glass Lewis support 25%</li> <li>If adopted after majority-supported shareholder proposal, ISS may issue negative vote recommendations against directors if less than 20%</li> <li>CII favors ability to nominate at least two candidates</li> </ul>
Nominating Group Size Limit	<ul style="list-style-type: none"> <li>25 – 2/118 (2%)</li> <li>20 – 105/118 (89%)</li> <li>15 – 3/118 (3%)</li> <li>10 – 4/118 (3%)</li> <li>5 – 1/118 (1%)</li> <li>1 – 1/118 (1%)</li> <li>No limit – 2/118 (2%); included in SEC vacated rule</li> </ul>	<ul style="list-style-type: none"> <li>General consensus that limit of 20 is reasonable</li> <li>Possibility of shareholder proposals seeking removal of limits</li> </ul>	<ul style="list-style-type: none"> <li>ISS favors minimal or no limits</li> <li>If adopted after majority-supported shareholder proposal, ISS may issue negative vote recommendations against directors if less than 20</li> <li>CII views <i>any</i> limit as “troublesome”</li> </ul>

\* Derived from publicly available voting policies as well as preferences expressed through engagement and voting results.

While proxy access has been the subject of shareholder proposals for several years, the full year data confirms that 2015 was a tipping point, following the private ordering pattern of majority voting in uncontested director elections. The 2015 proxy season saw a significant increase in the number of shareholder proxy access proposals and shareholder support for such proposals (see box below), as well as an increased frequency of negotiation and adoption of proxy access via board action—including an accelerating trend towards board adoption without receipt of a shareholder proposal.

Proxy access initiatives had limited levels of success prior to 2015. However, shareholder support started to increase in 2014 as proponents began to focus on the 3% for three years ownership requirement adopted by the Securities and Exchange Commission (SEC) in its 2010 rulemaking efforts (as described below).

In 2015, with a major initiative from public pension funds led by New York City Comptroller Scott M. Stringer and with encouragement from major investors, such as TIAA-CREF, and the large institutional investor industry group, the Council of Institutional Investors (CII), proxy access took hold. Adding to the momentum was the



SEC's removal beginning in 2015 of a key defense in the form of no-action relief in situations in which a company intends to put forward its own competing proposal. Proxy advisory firm policies that support proxy access and discourage efforts to defend against proxy access proposals added to the momentum. Moreover, in August 2014, the CFA Institute published a report discussing the potential economic benefits of proxy access; this report has been cited by Comptroller Stringer and several other proponents in their proposals.<sup>1</sup>

The broad-based shareholder campaign for proxy access on a company-by-company basis, and the apparent momentum developing among targeted companies and other leading companies to respond by taking action to adopt proxy access (with or without first receiving a shareholder proposal), is reminiscent of the campaign several years ago for companies to replace plurality voting with majority voting in the uncontested election of directors. Both issues relate to the ability of shareholders to influence the composition of the board, and both campaigns show the power of concerted efforts at private ordering.

## THE SEC'S 2010 PROXY ACCESS RULE

The SEC has unsuccessfully sought to adopt a market-wide proxy access rule for decades. Most recently, in 2010, the SEC adopted a proxy access rule (Exchange Act Rule 14a-11) that would have given shareholders the ability to nominate candidates through the company's proxy materials if a shareholder (or a group of shareholders without any limit on the size of the nominating group) held 3% of the company's shares for at least three years. Under the rule, a nominating shareholder (or group of shareholders, with no limit on the size of the group) could nominate one proxy access director, or 25% of the board, whichever is greater. Rule 14a-11 was adopted shortly after Section 971 of the Dodd-Frank Act confirmed the SEC's authority to promulgate a proxy access rule. The SEC issued final rules mandating proxy access in August 2010, which were scheduled to become effective in November 2010. In addition, the SEC also amended Exchange Act Rule 14a-8(i)(8) to allow shareholder proposals relating to proxy access and certain other director election mechanisms.<sup>2</sup>

In September 2010, Business Roundtable and the U.S. Chamber of Commerce challenged Rule 14a-11. In 2011, the U.S. Court of Appeals for the District of Columbia Circuit vacated Rule 14a-11 on the grounds that the SEC had acted "arbitrarily and capriciously" in promulgating the rule and failing to adequately assess its economic impact.<sup>3</sup> The SEC did not appeal the court's decision and has not re-proposed any proxy access rule since that decision; however, the amendment to Rule 14a-8 described above became effective in September 2011, thereby opening the door to shareholder proposals seeking proxy access.<sup>4</sup>

## UPTICK IN SHAREHOLDER PROXY ACCESS PROPOSALS IN 2015

In public comments on the SEC's proposed Rule 14a-11, several commenters expressed the view that the matter should be left to shareholders and companies to decide on a company-by-company basis through private ordering.<sup>5</sup> Private ordering may take place, for example, pursuant to Section 112 of the Delaware General Corporation Law.<sup>6</sup>

Fifteen companies adopted proxy access prior to 2015, including a few large companies, such as Hewlett-Packard Company (now known as HP Inc.), The Western Union Company and Verizon Communications Inc., which each adopted proxy access after receiving a shareholder proposal on the topic, as well as some companies that have since gone private. In addition, proxy access with a 5% for two years ownership threshold has been mandatory for companies incorporated in North Dakota since 2008; and we are aware of one public company that reincorporated to North Dakota several years ago with the stated purpose of taking advantage of this and other "shareholder-friendly" provisions.<sup>7</sup> To date, no shareholder has included a director nominee in the proxy materials of a United States company pursuant to a proxy access right.<sup>8</sup>

The private ordering effort is now in full swing. Shareholder proposals seeking proxy access were the defining feature of the 2015 proxy season, with more than 115 companies receiving proposals requesting that the board amend the bylaws to allow large, long-standing shareholders (or groups of shareholders) to nominate directors and include those nominees in the company's own proxy statement and related materials. The number of shareholder proxy access proposals submitted for the 2015 proxy season was more than four times the number submitted for the 2014 proxy season.

The New York City Pension Funds, with approximately \$160 billion under management, accounted for the majority of the proxy access proposals submitted for the 2015 proxy season. In November 2014, Comptroller Stringer announced the "Boardroom Accountability Project," targeting 75 companies with non-binding shareholder proxy access proposals.<sup>9</sup> The proposals request that the board adopt a bylaw to give shareholders who meet a threshold of owning 3% of the company's stock for three or more years the right to include their director candidates, representing up to 25% of the board, in the company's proxy materials, with no limit on the number of shareholders that could comprise a nominating group. According to Comptroller Stringer, the targeted companies were selected due to concerns about the following three priority issues:

- Climate change (i.e., carbon-intensive coal, oil and gas and utility companies).
- Board diversity (i.e., companies with little or no gender, racial or ethnic diversity on the board).
- Excessive executive compensation (i.e., companies that received significant opposition to their 2014 say-on-pay votes).

## COMPANIES TARGETED FOR 2016

On January 11, 2016, Comptroller Stringer announced that the New York City Pension Funds have expanded the "Boardroom Accountability Project" by submitting proxy access proposals at 72 companies for the 2016 proxy season.<sup>10</sup> 36 companies that had received proxy access proposals from Comptroller Stringer's office in 2015 were targeted again for 2016 because they had not yet adopted proxy access at a 3% ownership threshold (some companies that had adopted a 5% proxy access bylaw received a *binding* proposal for 2016). Another 36 companies were newly targeted for 2016, with a focus on the New York City Pension Fund's largest portfolio companies, coal-intensive utilities and companies selected due to concerns about board diversity and excessive CEO pay. The form of proxy access proposal submitted by Comptroller Stringer for the 2016 proxy season does not differ substantively from the template submitted for the 2015 proxy season except that it no longer specifically seeks shareholder approval of proxy access bylaws.

## INSTITUTIONAL INVESTOR SUPPORT FOR PROXY ACCESS

Proxy access is supported by many institutional investors, including the following:

- *BlackRock* – will review proxy access proposals on a case-by-case basis and generally support them provided that their parameters are not "overly restrictive or onerous" and "provide 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."<sup>11</sup>
- *California Public Employees' Retirement System (CalPERS)* – indicated that proxy access was one of its strategic priorities for the 2015 proxy season and supported proxy access proposals at 100 companies in 2015.<sup>12</sup>
- *California State Teachers' Retirement System (CalSTRS)* – supports proxy access at the 3% for three years threshold, capped at a minority of board seats.<sup>13</sup>

- *State Street Global Advisors* – will review proxy access proposals on a case-by-case basis evaluating the company’s specific circumstances and the proposal’s potential effect on shareholder value, taking into account “the ownership thresholds and holding duration proposed in the resolution, the binding nature of the proposal, the number of directors that shareholders may be able to nominate each year, company performance, company governance structure, shareholder rights and board performance.”<sup>14</sup>
- *TIAA-CREF* – wrote to the 100 largest companies in which it invests in February 2015, encouraging them to adopt proxy access at the 3% for three years threshold.<sup>15</sup> In addition, TIAA-CREF has submitted proxy access proposals at some companies for the 2016 proxy season.
- *T. Rowe Price* – supports proxy access for owners of 3% or more of the company’s outstanding shares, with a holding period requirement of no less than two years and no more than three years.<sup>16</sup>
- *United Brotherhood of Carpenters* – sent letters to 50 companies in late 2015 seeking a proxy access right in the event that the board refuses to accept the resignation of an incumbent director who fails to receive majority support.<sup>17</sup> The letters were sent to companies with a majority voting standard and a director resignation policy and that had shareholder proxy access proposals on the ballots for their 2015 annual meetings, whether or not those proposals received majority support.
- *Vanguard* – generally supports proxy access at the 5% for three years threshold, capped at 20% of board seats, but will consider case-by-case and supported at least 15 shareholder proposals with a 3% threshold in 2015.<sup>18</sup>

Fidelity generally votes against management and shareholder proposals to adopt proxy access.<sup>19</sup>

Several institutional investors have recently adopted proxy access, shedding light on the terms they presumably find acceptable. The table below shows the key parameters of the proxy access provisions adopted or proposed by major institutional investors in 2015.

Institution	Ownership Threshold and Duration	Nominee Limit (Max % of Board)	Nominating Group Size Limit
The Bank of New York Mellon Corp. (adopted on 10/13/15)	3% for 3 years	20% (at least 2 directors)	20
State Street Corporation (adopted on 10/15/15)	3% for 3 years	20%	20
The Goldman Sachs Group, Inc. (adopted on 10/23/15)	3% for 3 years	20% (at least 2 directors)	15
Morgan Stanley (adopted on 10/29/15)	3% for 3 years	20% (at least 2 directors)	20
T. Rowe Price Group, Inc. (adopted on 12/10/15)	3% for 3 years	20% (at least 2 directors)	20
BlackRock (will include management proposal for May 2016 annual meeting)	3% for 3 years	25%	20

CII has long supported proxy access, favoring a broad-based SEC rule imposing proxy access. Absent such a rule, Section 3.2 of CII’s *Corporate Governance Policies* states that a company should provide access to management proxy materials for an investor or a group of investors that have held in the aggregate at least 3% of the company’s voting stock for at least two years, to nominate less than a majority of the directors.<sup>20</sup>

In August 2015, CII issued guidelines setting forth what it considers best practices for companies adopting proxy access provisions. The guidelines highlight seven provisions that CII finds “troublesome” in that they could “significantly impair shareowners’ ability to use proxy access, or even render access unworkable.”<sup>21</sup> The provisions that are of most concern to CII are:

- An ownership threshold of 5%.
- The percent or number of board members that may be elected could result in fewer than two proxy access nominees.
- Aggregation of shareholders to form a nominating group is limited to a specified number.
- Not counting loaned shares (that meet certain conditions with respect to recall and voting) toward the ownership threshold during the holding period.
- A requirement for a nominating shareholder to continue to hold the requisite percentage of shares after the annual meeting.
- Re-nomination restrictions in the event a proxy access nominee fails to receive a specified minimum percentage of votes.
- Prohibitions on third-party compensation arrangements with proxy access nominees (although CII supports disclosure of such arrangements).

When the guidelines were issued, the interim executive director of CII stated that every proxy access provision in effect at the time included at least one of these “troublesome” provisions.<sup>22</sup>

Some institutional investors that favor proxy access coordinated their efforts during the 2015 proxy season in an attempt to increase investor support for the proxy access proposals they sponsored. Specifically, the New York City Pension Funds, CalPERS and other large labor-affiliated pension funds each filed Form PX14A6Gs with the SEC enabling them to communicate in support of their proxy access proposals (but not collect actual proxies) without such communications being subject to the proxy solicitation rules.

According to a report on the 2015 proxy season by Broadridge and PricewaterhouseCoopers, institutional investors are four times more likely to support proxy access than are individual investors: 61% of votes cast by institutional investors were in favor of proxy access in 2015, compared with only 15% of those cast by individual retail investors.<sup>23</sup> The report also indicated that retail investors voted only 28% of the shares they own. These findings suggest that companies facing a proxy access vote should seek out opportunities to engage with retail investors and encourage them to vote.

## PROXY ADVISORY FIRM POLICIES ON PROXY ACCESS

Both Institutional Shareholder Services (ISS) and Glass, Lewis & Co. generally favor proxy access for significant, long-term shareholders.

### ISS

#### *Shareholder and Management Proxy Access Proposals*

ISS generally recommends in favor of shareholder and management proxy access proposals with all of the following features:

- An ownership threshold of not more than 3% of the voting power.

- A holding period of no longer than three years of continuous ownership for each member of the nominating group.
- Minimal or no limits on the number of shareholders that may form a nominating group.
- A cap on the number of available proxy access seats of generally 25% of the board.

ISS will review any additional restrictions for reasonableness. ISS will generally recommend a vote against proposals that are more restrictive than the ISS guidelines. ISS policy does not specifically address how it evaluates competing shareholder and management proposals; in 2015, it recommended in favor of the shareholder proposals and against the management proposals, as described below.<sup>24</sup>

#### *Board Responsiveness to a Majority-Supported Shareholder Proposal<sup>25</sup>*

ISS issued FAQs in December 2015 clarifying when it may issue negative vote recommendations against directors of companies that do not implement a majority-supported shareholder proxy access proposal substantially in accordance with its terms. In evaluating a board's response to a majority-supported proposal, ISS will examine:

- Whether the major points of the shareholder proposal were implemented.
- Additional provisions that were not included in the shareholder proposal in order to assess whether such provisions unnecessarily restrict the use of a proxy access right.

ISS may recommend votes against individual directors, nominating/governance committee members or the entire board if the proxy access provision implemented or proposed by management contains material restrictions more stringent than those included in the shareholder proposal with respect to the following:

- Ownership thresholds above 3%.
- Ownership duration longer than three years.
- Aggregation limits below 20 shareholders.
- Cap on proxy access nominees set at less than 20% of the board.

ISS may issue negative vote recommendations against directors if the aggregation limit or cap on proxy access nominees differs from the terms of the shareholder proposal and the company has not disclosed its shareholder outreach efforts and engagement.

If the proxy access provision contains restrictions or conditions on proxy access nominees, ISS will review it on a case-by-case basis and consider the following restrictions as "potentially problematic," particularly when used in combination:

- Prohibitions on resubmission of failed nominees in subsequent years.
- Restrictions on third-party compensation of proxy access nominees.
- Restrictions on the use of proxy access and proxy contest procedures for the same meeting.
- How long and under what terms an elected shareholder nominee will count towards the maximum number of proxy access nominees.
- When the right will be fully implemented and accessible to qualifying shareholders.

ISS views the following restrictions as “especially problematic” in that they “effectively nullify the proxy access right”:

- Counting individual funds within a mutual fund family as separate shareholders for purposes of an aggregation limit.
- The imposition of post-meeting shareholding requirements for nominating shareholders.

ISS policy does not address the unilateral adoption or amendment of proxy access bylaws.

### *Proxy Access Candidates*

The FAQs ISS issued in December 2015 also clarify that when evaluating proxy access nominees, it will take into account any relevant factors, including:

- Nominee/nominator specific factors:
  - Nominators’ rationale.
  - Nominators’ critique of management/incumbent directors.
  - Nominee’s qualifications, independence and overall fitness for directorship.
- Company specific factors:
  - Company performance relative to its peers.
  - Background to the contested situation (if applicable).
  - Board’s track record and responsiveness.
  - Independence of directors/nominees.
  - Governance profile of the company.
  - Evidence of board entrenchment.
  - Current board composition (skill sets, tenure, diversity, etc.).
  - Ongoing controversies, if any.
- Election specific factors:
  - Whether the number of nominees exceeds the number of board seats.
  - Vote standard for the election of directors.<sup>26</sup>

Beginning in November 2015, ISS’ QuickScore governance ratings product has tracked, on a “zero-weight” basis, whether a company has adopted proxy access. In particular, ISS tracks the minimum ownership threshold and holding period, the maximum number of shareholders that can comprise a nominating group and the maximum percentage or number of board seats open to proxy access nominees.<sup>27</sup>

### **Glass Lewis**

Glass Lewis’ proxy voting policies for 2016 provide that it will review on a case-by-case basis shareholder proxy access proposals and the company’s response, including whether the company offers its own proposal in place of, or in addition to, the shareholder proposal. Glass Lewis will consider:

- Company size.
- Board independence and diversity of skills, experience, background and tenure.



- The shareholder proponent and the rationale for the proposal.
- The percentage of ownership requested and the holding period requirement (although note that Glass Lewis policy does not specify a preferred percentage).
- The shareholder base in both percentage of ownership and type of shareholder (such as a hedge fund, activist investor, mutual fund or pension fund).
- Board and management responsiveness to shareholders, as evidenced by progressive shareholder rights policies (such as majority voting or board declassification) and reaction to shareholder proposals.
- Company performance and steps taken to improve poor performance (such as appointing new executives or directors or engaging in a spin-off).
- Existence of anti-takeover protections or other entrenchment devices.
- Opportunities for shareholder action (such as the ability to act by written consent or the right to call a special meeting).

For the 2016 proxy season, Glass Lewis will consider the following factors when making vote recommendations with respect to conflicting management and shareholder proposals:

- The nature of the underlying issue.
- The benefit to shareholders from implementation of the proposal.
- The materiality of the differences between the terms of the conflicting proposals.
- The appropriateness of the provisions in the context of a company's shareholder base, corporate structure and other relevant circumstances.
- A company's overall governance profile and, specifically, its responsiveness to shareholders as evidenced by its response to previous shareholder proposals and its adoption of "progressive shareholder rights provisions" (which Glass Lewis has not defined).<sup>28</sup>

## GROUNDS FOR EXCLUSION OF SHAREHOLDER PROXY ACCESS PROPOSALS

Under the SEC's proxy rules, a company may exclude a shareholder proxy access proposal from its proxy materials if the proposal fails to meet any of the procedural and substantive requirements of Exchange Act Rule 14a-8. A company may seek no-action relief from the SEC Staff, pursuant to which the company can exclude the proposal from its proxy materials. Two substantive grounds that have been relied on by companies seeking to exclude a shareholder proxy access proposal are that the proposal directly conflicts with a management proposal (Rule 14a-8(i)(9)) or has already been substantially implemented by the company (Rule 14a-8(i)(10)). However, as discussed below, the SEC Staff recently issued guidance that will make it more difficult for a company to obtain no-action relief under Rule 14a-8(i)(9) on the grounds that a shareholder proxy access proposal directly conflicts with a management proxy access proposal.

### Directly Conflicting Proposals

In December 2014, the SEC's Division of Corporation Finance granted no-action relief to Whole Foods Market, Inc. on the basis that a 3% for three years shareholder proxy access proposal directly conflicted with a 9% for five years management proposal.<sup>29</sup> When Whole Foods filed its preliminary proxy statement with the SEC after this relief was granted, the ownership threshold in the management proposal was reduced from 9% to 5%.

In the wake of the no-action relief granted to Whole Foods, it was broadly expected that companies would counter shareholder proxy access proposals by putting forward management proxy access proposals with higher

minimum ownership thresholds, and obtain no-action relief on the basis that the proposals were conflicting and therefore excludable. However, following the grant of no-action relief to Whole Foods, James McRitchie, the proponent of the Whole Foods proposal, appealed the grant to the full SEC and a letter-writing campaign by incensed institutional investors followed.

In January 2015, SEC Chair Mary Jo White reversed course. In an unusual development, Chair White directed the SEC Staff to review Rule 14a-8(i)(9) as a basis for exclusion. As discussed in a previous [Sidley Update](#),<sup>30</sup> following Chair White's direction, the Division of Corporation Finance announced that it would express no view on the application of Rule 14a-8(i)(9) for the remainder of the 2015 proxy season in connection with all shareholder proposals—not just those seeking proxy access—and withdrew the no-action relief previously granted to Whole Foods.<sup>31</sup>

Business Roundtable and other commentators expressed concern that the SEC's approach forced companies faced with a shareholder proxy access proposal that are considering a management proposal to either include the shareholder proposal in the proxy materials, even though it will compete with the similar management proposal and possibly lead to confusion, or omit the shareholder proposal, creating a heightened risk of litigation and negative targeting by certain pension funds and proxy advisory firms. As described below, seven companies included competing shareholder and management proxy access proposals on the ballot in 2015. In a speech in June 2015, SEC Chair White noted that, notwithstanding concerns that shareholders would be confused by two competing proposals, "shareholders were able to sort it all out and express their views."<sup>32</sup>

## NEW SEC GUIDANCE ON EXCLUDABILITY OF DIRECTLY CONFLICTING SHAREHOLDER PROPOSALS

On October 22, 2015, the Staff of the SEC's Division of Corporation Finance issued Staff Legal Bulletin No. 14H (CF) ("SLB No. 14H")<sup>33</sup> which provides new guidance on the excludability of shareholder proposals that "directly conflict" with management proposals under Rule 14a-8(i)(9). As discussed in a previous [Sidley Update](#),<sup>34</sup> after reviewing the history and intended purpose of Rule 14a-8(i)(9) per SEC Chair White's request, the SEC Staff announced in SLB No. 14H that it will interpret the rule more narrowly than it has in the past. Going forward, the SEC Staff will permit a company to exclude a shareholder proposal as directly conflicting with a management proposal only "if 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."

A non-binding shareholder proposal seeking proxy access on terms different from management's proxy access proposal will generally not be excludable under Rule 14a-8(i)(9). Proposals seeking a similar objective (*e.g.*, proxy access) but on different terms (*i.e.*, a different means of accomplishing the same objective) would not "directly conflict," as a reasonable shareholder could logically vote in favor of both proposals.

### SEC Staff Example of Proxy Access Proposals That Do Not Directly Conflict

Management proposal with a 5% for 3 years ownership threshold and limit on nominees of 10% of the board	Shareholder proposal with a 3% for 3 years ownership threshold and limit on nominees of 20% of the board
---	--

The SEC Staff does not believe that a reasonable shareholder would logically vote for two binding shareholder and management proposals that contain two mutually exclusive mandates. In the case of such a "direct conflict," the SEC Staff could, in its no-action response, allow a shareholder proponent to revise its proposal to make it non-binding rather than binding, and therefore potentially not excludable under Rule 14a-8(i)(9).

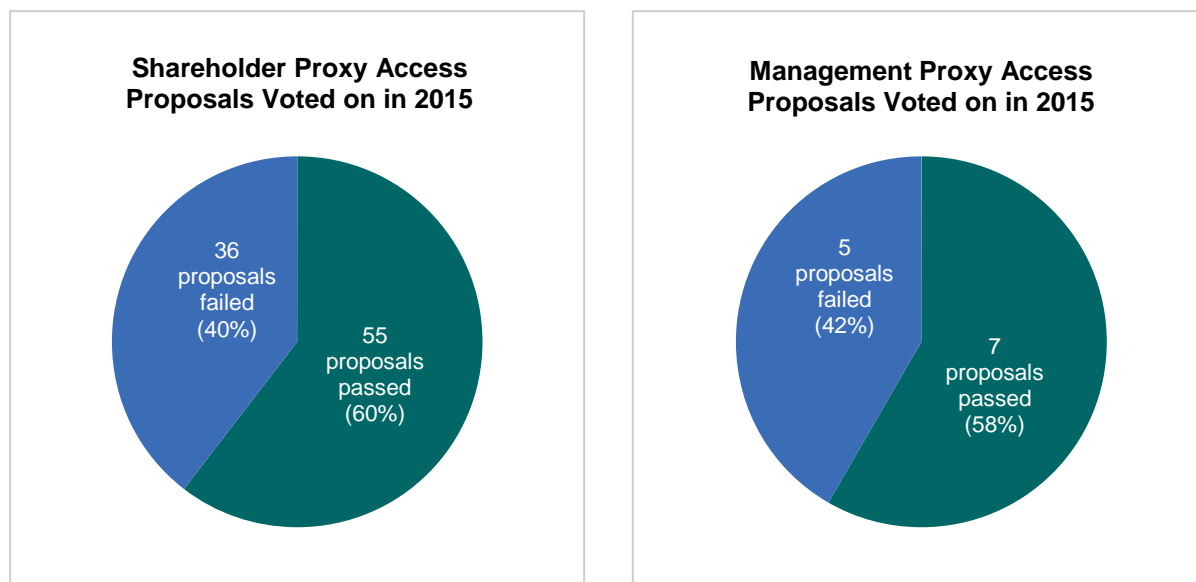
In light of the new guidance, we expect to continue to see competing proxy access proposals on ballots during the 2016 proxy season. In a situation where both the management and shareholder proposals are approved by shareholders, the board may have to consider the effects of both proposals; the SEC Staff does not consider such a decision to represent the kind of "direct conflict" the rule was designed to address. In SLB No. 14H, the SEC Staff noted that, to minimize concerns about shareholder confusion, any company that includes shareholder and management proposals on the same topic on its ballot can include proxy statement disclosure explaining the differences between the two proposals and how the company would expect to consider the voting results.

## Substantially Implemented Proposals

Companies that adopt proxy access can seek to omit a shareholder proxy access proposal on the grounds that it has been “substantially implemented” by the company. In March 2015, the SEC granted General Electric Company no-action relief allowing it to exclude a shareholder proxy access proposal on these grounds. The shareholder proposal had sought an ownership threshold of 3% for three years, for up to 20% of the board’s seats but was silent on the number of shareholders that could comprise a nominating group. General Electric adopted a provision with the same 3% for three years threshold for up to 20% of board seats, but limited to 20 the number of shareholders that could compromise a nominating group.<sup>35</sup>

Substantial implementation under Rule 14a-8(i)(10) is the primary basis of exclusion being asserted by companies when seeking no-action relief to exclude shareholder proxy access proposals received for their 2016 annual meetings. A number of companies that adopted proxy access on relatively standard terms are seeking to exclude proposals filed by John Chevedden arguing that their proxy access bylaws implement the “essential objectives” of his proposal even though it contains no limit on the size of the shareholder group and no restrictions on proxy access nominees that are not applicable to other director candidates. NVR, Inc. is seeking no-action relief from the SEC under Rule 14a-8(i)(10) to exclude a proxy access proposal that Comptroller Stringer submitted in response to NVR’s adoption of a proxy access bylaw in November 2015. The proposal calls for revisions to several provisions that the proponent deems overly restrictive, including, among other things, reducing the ownership threshold from 5% to 3% and deleting the group size limit of 20 shareholders.<sup>36</sup> It is yet to be seen whether the SEC will grant no-action relief on the basis of substantial implementation if the proxy access provision adopted by the company varies considerably from the terms of the shareholder proxy access proposal.

## VOTING RESULTS ON PROXY ACCESS PROPOSALS IN 2015



Proxy access proposals with a 3% for three years ownership threshold are likely to receive majority shareholder support.

### Shareholder Proposals

Ninety-one shareholder proxy access proposals were voted on in 2015, averaging support of approximately 55% of votes cast; 55 proposals (60%) received majority support while 36 (40%) did not pass. Management opposed all but four of the proposals; it supported three of the proposals and provided no recommendation with respect to

one proposal. ISS supported all shareholder proposals, most of which included a 3% for three years ownership threshold (such as Comptroller Stringer's proposals).<sup>37</sup>

Voting results on shareholder proxy access proposals in 2015 appear to have been influenced by various factors:

Factors Increasing Shareholder Support	Factors Decreasing Shareholder Support
<ul style="list-style-type: none"> <li>No competing management proxy access proposal on the ballot</li> </ul>	<ul style="list-style-type: none"> <li>Competing management proxy access proposal on the ballot</li> </ul>
<ul style="list-style-type: none"> <li>Company did not adopt proxy access prior to the meeting</li> </ul>	<ul style="list-style-type: none"> <li>Company adopted proxy access prior to the meeting; significantly lower support if previously adopted at 3% ownership threshold</li> </ul>
<ul style="list-style-type: none"> <li>Less insider ownership</li> </ul>	<ul style="list-style-type: none"> <li>Greater degree of insider ownership</li> </ul>
<ul style="list-style-type: none"> <li>Less voting retail shareholders</li> </ul>	<ul style="list-style-type: none"> <li>More voting retail shareholders</li> </ul>
<ul style="list-style-type: none"> <li>Combative tone of corporate disclosure around proxy access concept</li> </ul>	<ul style="list-style-type: none"> <li>More conciliatory/open tone of corporate disclosure around proxy access concept</li> </ul>
<ul style="list-style-type: none"> <li>Concerns relating to corporate performance, shareholder rights and/or compensation</li> </ul>	<ul style="list-style-type: none"> <li>Lack of concern relating to corporate performance, shareholder rights and/or compensation</li> </ul>
<ul style="list-style-type: none"> <li>Shareholder proposal voted on later in the proxy season, as momentum towards proxy access has accelerated</li> </ul>	<ul style="list-style-type: none"> <li>Shareholder proposal voted on earlier in the proxy season</li> </ul>

### Management Proposals

Twelve management proxy access proposals were voted on in 2015, averaging support of 61.5% of votes cast; seven proposals (58.3%) passed while five (41.7%) did not pass (including one that received majority support but fell short of the company's supermajority vote requirement). ISS recommended votes in favor of five of these proposals (which followed the 3% for three years formulation) and against seven of these proposals (six of which included a 5% for three years ownership threshold; one included a 3% for three years threshold (as discussed below)).

### Competing Shareholder and Management Proposals

At seven companies shareholders voted on two proxy access proposals at the 2015 annual meeting—a shareholder proposal with a 3% ownership threshold and a management proposal with an ownership threshold of 5% (at six companies) or 3% (at one company). ISS recommended in favor of all seven shareholder proposals. ISS recommended against all seven management proposals, including at the one company which proposed a 3% for three years threshold but imposed more restrictive terms than the shareholder proposal. Specifically, the management proposal at that company included a cap of 20% of board seats (compared with a 25% cap in the shareholder proposal) and a limit of 20 shareholders in the nominating group (compared with no limit in the shareholder proposal).

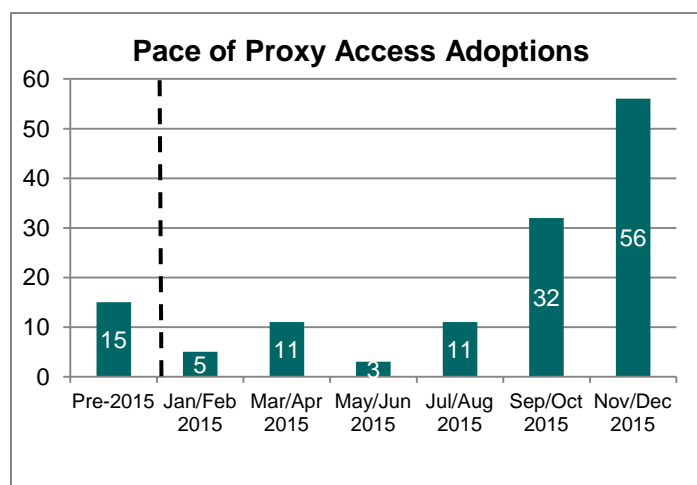
As shown in the table below, the management proposal passed at three companies, the shareholder proposal passed at three companies, neither proposal passed at one company and there were no instances where both proposals passed. As noted above, SEC Chair White stated in June 2015 that, despite the concerns of some commentators, there did not appear to be shareholder confusion with respect to competing proposals. We expect to continue to see competing proxy access proposals on ballots in the 2016 proxy season in light of the new SEC guidance on Rule 14a-8(i)(9) discussed above.

Company	Shareholder Proposals			Management Proposals			Subsequent Adoptions
	Parameters	ISS Rec.	% Support	Parameters	ISS Rec.	% Support	
The AES Corporation	<ul style="list-style-type: none"> <li>• 3%</li> <li>• 3 years</li> <li>• 25% cap</li> <li>• No limit on size of nominating group</li> </ul>	For All	66.4	5% • 3 years • 20% cap • monitoring peers and soliciting shareholder input when fixing limit (Advisory)	Against All	36.2	Adopted on 11/25/15 3% • 3 years • 20% cap • limit of 20
Chipotle Mexican Grill, Inc.			49.9	5% • 3 years • 20% cap • limit of 20 (Binding)		34.7	N/A
Cloud Peak Energy Inc.			71.1	5% • 3 years • 10% cap • limit of 1 (Binding)		25.9	Adopted on 10/20/15 3% • 3 years • 20% cap (at least 1) • limit of 20
Exelon Corporation			43.6	5% • 3 years • 20% cap • limit of 20 (Advisory)		52.6	N/A
Expeditors International of Washington, Inc.			35.0	3% • 3 years • 20% cap • limit of 20 (Advisory)		70.3	N/A
SBA Communications Corporation			46.3	5% • 3 years • 20% cap • limit of 10 (Advisory)		51.7	Adopted on 7/28/15 5% • 3 years • 20% cap (at least 1) • limit of 10
Visteon Corporation			75.7	5% • 3 years • 20% cap • monitoring peers and soliciting shareholder input when fixing limit (Advisory)		21.2	N/A
<b>Average % Support</b>			<b>55.4</b>			<b>41.8</b>	

## ADOPTION OF PROXY ACCESS PROVISIONS IN 2015 AND TYPICAL PARAMETERS

118 companies adopted proxy access during 2015, and they did so in a range of circumstances as described in Part A of the Appendix.<sup>38</sup> All companies adopted proxy access in their bylaws except for one company, which incorporated it into the certificate of incorporation upon its spin-off. Forty-five companies adopted proxy access without having received a known shareholder proxy access proposal—this trend is accelerating.

Part B of the Appendix highlights the key parameters of the proxy access provisions adopted in 2015, including the minimum ownership threshold, maximum percentage of board seats open to proxy access nominees and maximum number of shareholders that can comprise a nominating group. It also highlights additional selected provisions relating to the treatment of loaned shares, post-meeting ownership requirements, third-party compensation arrangements, the nomination deadline and exclusion of proxy access nominees if a director has been nominated under the advance notice provision.



More than 20% of companies in the S&P 500 have now adopted proxy access. While market practice continues to develop, the proxy access provisions adopted by companies during 2015 include several elements that have emerged as typical, although there are some variations. In addition to the key parameters and selected provisions described in Part B of the Appendix, proxy access provisions delineate various procedural and informational requirements, proxy access nominee eligibility conditions and circumstances in which a company will not be required to include a proxy access nominee in its proxy materials.

## A MOVING TARGET – AMENDMENTS TO PREVIOUSLY ADOPTED PROVISIONS

At three companies that adopted a proxy access bylaw in 2015 prior to the annual meeting, their respective boards subsequently amended the bylaws after shareholder proxy access proposals with less restrictive terms passed at the annual meetings. Specifically, CF Industries Holdings, Inc., Marathon Oil Corporation and The Priceline Group Inc. amended their proxy access bylaws to (i) decrease the required ownership percentage from 5% to 3% and (ii) change the maximum percentage of board seats available to proxy access nominees from 20% to 25%. The amendment to The Priceline Group Inc.'s bylaw also eliminated the 20 shareholder limit on forming a group for purposes of meeting the required ownership percentage.

The Priceline Group Inc. further amended its proxy access bylaw in November 2015 to:

- Clarify that the 500-word limit on the nominating shareholder's support statement applies separately to each proxy access nominee (rather than to all proxy access nominees in the aggregate).
- Extend the time by which loaned shares can be recalled in order to count toward the 3% ownership threshold from 3 to 5 business days.
- Replace the requirement that a nominating shareholder state an affirmative intention to hold the required shares for at least one year with a requirement to provide a statement of its intention with respect to holding the required shares following the relevant shareholder meeting.

In December 2015, Hasbro, Inc. amended its previously adopted proxy access bylaw to:

- Clarify that the following classes of holders will count as one shareholder for purposes of the 20-shareholder group size limit: funds under common management and funded primarily by the same employer, a "family of investment companies" and a "group of investment companies."
- Extend the time by which loaned shares can be recalled in order to count toward the 3% ownership threshold from 3 to 5 business days.

Identifying itself as an "early adopter" that adopted proxy access in June 2015 "when the views of the governance community on proxy access were still developing," Monsanto Company amended its proxy access bylaw in January 2016 "as a result of the continued evolution of practice regarding proxy access implementation" to eliminate several restrictions and conditions on the proxy access right.<sup>39</sup> Specifically, the amended bylaw:

- Explicitly counts loaned shares toward the 3% ownership threshold.
- No longer requires the requisite number of shares to be held for one year after the annual meeting.
- Requires disclosures of third-party compensatory arrangements but no longer prohibits them.
- No longer restricts the re-nomination of a proxy access nominee who failed to receive at least 25% support in the past two years.
- No longer includes the creeping control limitation which would have banned a successful nominating shareholder from using proxy access for two years.

### Typical Provisions

#### *Nomination Deadline; Limited to Annual Meetings*

Requests to include proxy access nominees in the company's proxy materials typically must be received within a window of 120 to 150 days before the anniversary of (i) the date on which the company released its proxy statement for the previous year's annual meeting (83 out of 118 companies (70%)) or (ii) the previous year's annual meeting (9 out of 118 companies (8%)). Less commonly, the deadline is a window of 90 to 120 days before the anniversary of the previous year's mailing date (3 out of 118 companies (3%)) or annual meeting date (12 out of 118 companies (10%)). Seven out of 118 companies (6%) require that requests be received prior to the date that is 120 days before the date the company released its proxy statement to shareholders in connection with the previous year's annual meeting (i.e., the same as the deadline for shareholder proposals under Exchange Act Rule 14a-8, which does not incorporate a window). Proxy access provisions typically specify that

proxy access may only be used with respect to director elections at annual meetings (but not special meetings) of shareholders. Several companies that adopted proxy access later in 2015 specify that the right cannot be used until 2017.

#### *Net Long Beneficial Ownership of 3% or 5%*

Three percent for three years is by far the most common ownership threshold (108 out of 118 companies (92%)), although a small number of companies have adopted a 5% for three years threshold (10 out of 118 companies (8%)). As discussed above, three companies that initially adopted proxy access at a 5% ownership threshold subsequently amended their bylaws to decrease the required ownership percentage to 3%.

A nominating shareholder is typically deemed to own only those outstanding common shares of the company as to which the shareholder possesses both the full voting and investment rights pertaining to the shares, and the full economic interest in such shares. For example, shares subject to any derivative arrangement entered into by the shareholder or any of its affiliates would not qualify as eligible ownership for proxy access purposes. Loaned shares explicitly count as “owned” for purposes of meeting the ownership threshold in most of the proxy access provisions (99 out of 118 companies (84%)), subject to certain conditions. Where loaned shares count toward ownership, most provisions require that the nominating shareholder has the power to recall the loaned shares within a specified time frame (most commonly, on three or five business days’ notice), or may terminate the share lending within a specified time frame. Some provisions require that the nominating shareholder has actually recalled the loaned shares prior to the end of the relevant period.

#### *Holding Period*

All of the proxy access provisions adopted in 2015 provide that the nominating shareholder must own the requisite amount of shares for at least three years. A nominating shareholder is typically required to continue to own the requisite amount of shares until the nomination date, the record date and annual meeting date and, at 46 out of 118 companies (39%), is required to represent that it will, or intends to, continue to own the requisite shares for at least one year after the annual meeting.

#### *Nominee Limit and Procedure for Selecting Candidates if Nominee Limit is Exceeded*

Many companies have limited the number of board seats available to proxy access nominees to 20% of the board (45 out of 118 companies (38%)), nine of which provide for a minimum of one proxy access nominee. Companies are increasingly limiting the number of board seats available to proxy access nominees to the greater of two or 20% of the board (59 out of 118 companies (50%)). Some companies have adopted a 25% cap (14 out of 118 companies (12%)). In most cases, if the calculation of the maximum number of proxy access nominees does not result in a whole number, the maximum number of proxy access nominees that the company would be required to include in its proxy materials would be the closest whole number below the applicable percentage (e.g., 20% or 25%).

Most proxy access provisions provide that, if a vacancy occurs on the board after the nomination deadline but before the date of the annual meeting, and the board decides to reduce the size of the board in connection with the vacancy, the nominee limit would be calculated based on the reduced number of directors. Any proxy access nominee who is either subsequently withdrawn or included by the board in the proxy materials as a board-nominated candidate typically would count against the nominee limit (including in a specified number of future years). Many proxy access provisions provide that the maximum number of proxy access nominees that the company would be required to include in its proxy materials will be reduced by the number of director candidates nominated by any shareholder pursuant to the company’s advance notice provisions (29 out of 118 companies (25%)).

Any nominating shareholder that submits more than one nominee would be required to provide a ranking of its proposed nominees. If the number of proxy access nominees from all nominating shareholders exceeds the nominee limit, the highest ranking qualified person from the list proposed by each nominating shareholder, beginning with the nominating shareholder with the largest qualifying ownership and proceeding through the list of nominating shareholders in descending order of qualifying ownership, would be selected for inclusion in the proxy materials, with the process repeating until the nominee limit is reached.

#### *Limitation on the Size of the Nominating Group*

All but two companies limit the number of shareholders that are permitted to comprise a nominating group. A nominating group size limit of 20 is by far the most common (105 out of 118 companies (89%)); however, a small number of companies set a lower limit (e.g., 1, 5, 10 or 15) and two companies set the limit at 25. Proxy access provisions often also provide that a shareholder cannot be a member of more than one nominating group. Many companies require that one group member be designated as authorized to act on behalf of all other group members. It is typical to provide that members of the same fund family count as one shareholder for purposes of this limit.

#### *Information Required of All Nominating Shareholders*

Each nominating shareholder is typically required to provide certain information to the company, including:

- Verification of, and information regarding, the stock ownership of the shareholder as of the date of the submission and the record date for the annual meeting (including in relation to derivative positions).
- The Schedule 14N filed by the shareholder with the SEC.
- Information regarding each proxy access nominee, including biographical and stock ownership information.
- The written consent of each proxy access nominee to (i) be named in the proxy statement, (ii) serve as a director if elected and (iii) the public disclosure of the information provided by the shareholder regarding the proxy access nominee.
- A description of any arrangement with respect to the nomination between the shareholder and any other person.
- Any other information relating to the shareholder that is required to be disclosed pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder.
- The written consent of the shareholder to the public disclosure of the information provided to the company.

Nominating shareholders are generally permitted to include in the proxy statement a 500-word statement in support of their nominees. The company may omit any information or statement that it, in good faith, believes would violate any applicable law or regulation.

Nominating shareholders are also typically required to make certain written representations to and agreements with the company, including in relation to:

- Lack of intent to change or influence control of the company.
- Intent to maintain qualifying ownership through the annual meeting date and, at 46 out of 118 companies (39%), for one year beyond the meeting date.
- Refraining from nominating any person for election to the board other than its proxy access nominees.
- Intent to be present in person or by proxy to present its nominees at the meeting.



- Not participating in any solicitation other than that relating to its nominees or board nominees.
- Not distributing any form of proxy for the annual meeting other than the form distributed by the company.
- Complying with solicitation rules and assuming liability and providing indemnification relating to the nomination, if required.
- The accuracy and completeness of all information provided to the company.

#### *Information Required of All Proxy Access Nominees*

Each proxy access nominee is typically required to make certain written representations to and agreements with the company, including in relation to:

- Acting in accordance with his or her duties as a director under applicable law.
- Not being party to any voting agreements or commitments as a director that have not been disclosed to the company.
- Not being party to any compensatory arrangements with a person or entity other than the company in connection with such proxy access nominee's candidacy and/or service as a director that have not been disclosed to the company.
- Complying with applicable laws and stock exchange requirements and the company's policies and guidelines applicable to directors.
- The accuracy and completeness of all information provided to the company.

Proxy access nominees are also typically required to submit completed and signed D&O questionnaires.

Several companies have adopted a provision requiring each proxy access nominee to submit an irrevocable resignation to the company in connection with his or her nomination, which would become effective upon the board determining that certain information provided by the proxy access nominee in connection with the nomination is untrue or misleading or that the nominee or the nominating shareholder breached any obligations to the company.

#### *Exclusion or Disqualification of Proxy Access Nominees*

It is typical for proxy access provisions to permit exclusion of proxy access nominees from the company's proxy statement if the nominating shareholder (or at some companies, any shareholder) has nominated any person (or at some companies, one or more of the proxy access nominees) to the board pursuant to the company's advance notice provisions (96 out of 118 companies (81%)).

In addition, the company is typically not required to include a proxy access nominee in the company's proxy materials if any of the following apply:

- The nominee withdraws, becomes ineligible or does not receive at least 25% of the votes cast at his or her election. Such person is typically ineligible to be a proxy access nominee for the two annual meetings following such vote.
- The nominating shareholder participates in the solicitation of any nominee other than its nominees or board nominees.
- The nominee is or becomes a party to a compensatory arrangement with a person or entity other than the company in connection with such nominee's candidacy or service as a director that has not been disclosed to the company or, at 28 out of 118 companies (24%), under any circumstances, whether or not disclosed.

- The nominee is not independent under any applicable independence standards. Some companies require nominees to meet heightened standards of independence applicable to audit committee and/or compensation committee members under SEC, stock exchange and/or IRS rules.
- The election of the nominee would cause the company to violate its charter or bylaws, any stock exchange requirements or any laws, rules or regulations.
- The nominee has been an officer or director of a competitor (often as defined in Section 8 of the Clayton Antitrust Act of 1914) within the past three years.
- The nominee is the subject of a pending criminal proceeding or has been convicted in a criminal proceeding within the past 10 years.
- The nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act.
- The nominee or the nominating shareholder has provided false or misleading information to the company or breached any obligations under the proxy access provision.

Several proxy access provisions include “creeping control” limitations which take various forms. A proxy access nominee elected by shareholders will typically count towards the proxy access nominee limit in future years (often two or three years after election). At some companies, if a nominating shareholder’s nominee is elected to the board, then such nominating shareholder may not utilize proxy access for the following two annual meetings (other than with respect to the nomination of the previously elected proxy access nominee).

### SPOTLIGHT: LIMITATIONS ON THE SIZE OF THE NOMINATING GROUP

Companies that have already adopted proxy access should bear in mind that shareholders may seek to modify the terms of such provisions in the future. For example, Mr. McRitchie, the proponent at Whole Foods and several other companies that have since adopted proxy access, has criticized many proxy access bylaws as embodying “proxy access lite” and announced that he “will be circling back to these companies to get more favorable terms,” which he has already begun to do by submitting revised proposals at some companies, including Apple.<sup>40</sup> Mr. McRitchie revised the language in his template proxy access proposal to explicitly provide for no group size limit (among other things) with the goal of “avoiding proxy access lite from the start,” and has begun submitting the revised template to companies that have not yet adopted proxy access provisions.<sup>41</sup>

The public pension funds led by New York City Comptroller Stringer have also expressed concerns about certain “unworkable” proxy access provisions adopted to date, including provisions which limit the number of shareholders who can aggregate to form a nominating group.<sup>42</sup> Comptroller Stringer’s template proxy access proposals for 2015 and 2016 do not limit the number of shareholders that can comprise a nominating group.

Although untested, in light of recent comments by the Director of the SEC’s Division of Corporation Finance, it seems likely that no-action relief would not be available to exclude a shareholder proxy access proposal that specifically seeks removal of the group size limit on the “substantially implemented” basis unless the company can show that it substantially implemented the *removal of the limit* sought by the proponent.<sup>43</sup>

The board or the chairman of the annual meeting may declare a director nomination by a shareholder to be invalid, and such nomination may be disregarded, if the proxy access nominee or the nominating shareholder breaches any obligations under the proxy access provision or the nominating shareholder does not appear at the annual meeting in person or by proxy to present the nomination.

### POTENTIAL IMPACT OF PROXY ACCESS ON CORPORATE GOVERNANCE

It remains to be seen what impact proxy access will have on corporate governance. At companies where proxy access has been adopted, boards and management may become more focused on the quality of shareholder relations, communications and engagement, in an effort to avoid a contested election against one or more proxy access nominees.

One of the benefits of the board self-determination that occurs absent a proxy contest or proxy access situation is the ability of the board to ensure that its composition is aligned with its view of what the company needs for effective oversight. This is not a simple matter given the mosaic of skill sets, experience and diversity that is needed on a board.

An elected proxy access director will owe the same fiduciary duties as the other directors, though some may view proxy access directors as potentially having an allegiance to the nominating shareholder's interests. Depending on the circumstances, however, there may be a greater risk that the proxy access director is viewed by the rest of the board as an outsider or even an adversary.

Concerns about how proxy access may impact board dynamics include:

- **Board fragmentation.** The board may become dominated by factions that are aligned with particular segments of the shareholding body rather than the shareholding body as a whole.
- **Board dysfunction.** Distrust among directors may develop and lead to board dysfunction with an associated negative impact on the quality of board oversight.

Concerns about how proxy access may impact a company in general include:

- **A higher risk of legal challenges.** Disagreement among directors may lead to a greater risk of legal challenges, including challenges in contexts that lack business judgment rule protection, subjecting transactions to heightened standards of review.
- **Joint shareholder action.** Special interest shareholders could coordinate to increase their representation on the board without the shareholding body at large understanding the potential for joint action.
- **Increased costs and distractions.** Proxy access can lead to increased costs and distractions without delivering improvements in company or board performance.
- **Potential withdrawal of existing directors.** Incumbent directors may choose to resign rather than serve alongside a particular proxy access director.

## INTERNATIONAL PERSPECTIVES ON PROXY ACCESS

In considering how proxy access may impact corporate governance in the United States, it may be helpful to consider international experiences. The CFA Institute Report on Proxy Access indicates that proxy access has historically been used sparingly to elect directors in countries that have adopted proxy access, including Canada, the UK, Australia, France, Germany, the Netherlands, Norway, Switzerland and Brazil. For example, the report cites to a 2009 finding that proxy access nominations at Canadian companies are often withdrawn prior to a vote because companies are "more willing and more likely to reach agreements with investors to avoid a vote."<sup>44</sup>

The CFA Institute Report on Proxy Access also evaluates the relationship between company returns and proxy access elections in Canada, the UK and Australia, and states that "[t]o the extent that proxy access provides governance benefits from a policy perspective, a preliminary analysis suggests that adverse financial impacts are negligible."<sup>45</sup>

## PRACTICAL CONSIDERATIONS

Notwithstanding the concerns outlined above, proxy access will inevitably soon play a larger role in corporate governance as a result of private ordering.

Proxy access will likely follow the pattern of majority voting in uncontested director elections and become a majority practice among S&P 500 companies in the next few years, assuming that institutional investors continue to campaign through shareholder proposals and the threat of shareholder proposals.

Companies have several alternatives when considering whether and when to adopt proxy access. Companies with a majority-supported proxy access proposal in 2015 should consider proxy advisor policies (including the new ISS FAQs discussed above) when implementing proxy access—specifically, the likelihood of negative vote recommendations on director elections if the board has “failed to act” on a majority-supported shareholder proposal.

We expect that many companies will continue to follow a “wait and see” approach, particularly if they have not previously received a shareholder proxy access proposal; however, the trend towards adopting proxy access without receipt of a shareholder proposal is accelerating. If faced with a proxy access proposal, counsel should be prepared to help the board and management consider the full range of options available given the company’s circumstances.

Some companies may choose to proactively adopt a proxy access bylaw by board action or by requesting shareholder approval of a bylaw (or charter) amendment at the next annual meeting, in either case with or without a prior public commitment to adopt proxy access. This may help position the company as a governance leader—particularly if no shareholder proposal has been received—and, depending on the specific provisions, may minimize the likelihood of receiving a future shareholder proxy access proposal. A company taking this approach should ensure that it can justify any proxy access provision with thresholds that differ from the following terms which are becoming increasingly standard: 3% for three years for up to 20% of the board (at least two directors) with a group size limit of 20 (e.g., by disclosing preferences of its shareholders as communicated to the company through engagement).

As companies are considering these alternatives, they should:

- Follow developments in this area and keep the nominating and corporate governance committee and the full board generally apprised.
- Know the preferences of their shareholder base (as evidenced in proxy voting policies and other public statements, and voting history on proxy access proposals) and engage with shareholders with respect to proxy access.
- Keep abreast of proxy advisory firm policies and guidance relating to proxy access.
- Stay apprised of the terms upon which companies are adopting proxy access.
- Review the advance notice and director qualification provisions in their bylaws and consider whether and, if so, how such provisions may be aligned with a proxy access provision if implemented. In addition, companies that have cumulative voting in place may wish to consider eliminating cumulative voting or requiring cumulative voting to be suspended if a proxy access nominee is included in the company’s proxy materials.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

**Holly J. Gregory**  
Partner  
[holly.gregory@sidley.com](mailto:holly.gregory@sidley.com)  
+1 212 839 5853

**John P. Kelsh**  
Partner  
[jkelsh@sidley.com](mailto:jkelsh@sidley.com)  
+1 312 853 7097

**Thomas J. Kim**  
Partner  
[thomas.kim@sidley.com](mailto:thomas.kim@sidley.com)  
+1 202 736 8615

**Rebecca Grapsas**  
Counsel  
[rebecca.grapsas@sidley.com](mailto:rebecca.grapsas@sidley.com)  
+1 212 839 8541

**Claire H. Holland**  
Special Counsel  
[cholland@sidley.com](mailto:cholland@sidley.com)  
+1 312 853 7099

## **SIDLEY CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION PRACTICE**

Lawyers in Sidley's Corporate Governance and Executive Compensation practice regularly advise corporate management, boards of directors and board committees on a wide variety of corporate governance matters, including shareholder activism and engagement, fiduciary duties, board oversight responsibilities, board investigations and special committees, SEC disclosure, legal compliance, corporate responsibility, board evaluation, board and committee structures and issues arising under Sarbanes-Oxley and Dodd-Frank. Our advice relates to the procedural aspects as well as the legal consequences of corporate and securities transactions and other corporate actions, including takeover defenses, proxy contests, SEC filings and disclosure issues, stock option issues and general corporate law matters. Our broad client base allows us to provide advice regarding best practices and trends in such matters as directors' and officers' responsibilities, board and committee practices, disclosure controls and procedures, internal controls, executive compensation and other matters.

## **ENDNOTES**

<sup>1</sup> *Proxy Access in the United States: Revisiting the Proposed SEC Rule*, CFA Institute (Aug. 2014) (the "CFA Institute Report on Proxy Access"), [available here](#).

<sup>2</sup> SEC Release No. 33-9136, *Facilitating Shareholder Director Nominations* (Aug. 25, 2010) (the "SEC Proxy Access Release"), [available here](#).

<sup>3</sup> *Business Roundtable and Chamber of Commerce v. Securities and Exchange Commission* (D.C. Cir. Jul. 22, 2011), [available here](#).

<sup>4</sup> In response to questions from U.S. House of Representatives Democrats during a congressional hearing in March 2015, SEC Chair White testified that the SEC has no "current intention" to adopt a mandatory proxy access rule. Chair White pointed to the success of the current shareholder proposal process and indicated that the SEC is very closely monitoring the private ordering process to see the direction it takes. Hearing entitled "Examining the SEC's Agenda, Operations and FY 2016 Budget Request" before the Committee on Financial Services of the United States House of Representatives (Mar. 24, 2015), [available here](#). In July 2015, the SEC posted to its website a working paper relating to proxy access by two economists in the SEC's Division of Economic and Risk Analysis and a Penn State professor. The study found that the private ordering process for proxy access increases shareholder value (as indicated by such increases at firms targeted by Comptroller Stringer's proxy access campaign) but that it "may lead to a second best outcome" as compared to universally mandated proxy access—in other words, private ordering may not efficiently deliver proxy access at the companies that need it most. The paper identifies three key findings:

- Shareholder proponents do not disproportionately target the companies that the market expects to benefit most from proxy access (as measured by stock price returns at the time the SEC announced that it would stay the effectiveness of the now-vacated 2010 proxy access rule).
- Management is more likely to resist shareholder proposals at companies that stand to benefit more from proxy access.
- Shareholder proposals have been converging to standard terms (e.g., the 3% for 3 years terms of the SEC's 2010 rule), which suggests that the private ordering process is not tending towards the delivery of customized, company-specific solutions.

Tara Bhandari, Peter Iliev and Jonathan Kalodimos, *Public versus Private Provision of Governance: The Case of Proxy Access* (Jul. 24, 2015), [available here](#).

<sup>5</sup> SEC Proxy Access Release at 17.

<sup>6</sup> "The bylaws may provide that if the corporation solicits proxies with respect to an election of directors, it may be required, to the extent and subject to such procedures or conditions as may be provided in the bylaws, to include in its proxy solicitation materials (including any form of proxy it distributes), in addition to individuals nominated by the board of directors, 1 or more individuals nominated by a stockholder." Excerpted from Section 112 of the Delaware General Corporation Law.

<sup>7</sup> North Dakota Publicly Traded Corporations Act, N.D. Cent. Code § 10-35-08, [available here](#). See American Railcar Industries, Inc., Definitive Proxy Statement (filed Apr. 30, 2009); Carl Icahn owned a controlling interest at the time of reincorporation in June 2009.

<sup>8</sup> In the event that a company was required to include a proxy access nominee on its ballot, Broadridge has indicated in preliminary conversations that its systems would handle such a ballot in the same manner as a universal proxy card. In this situation, Broadridge can configure Internet voting so that a voter can only vote “for” the number of directors that corresponds to the number of board seats up for election. Paper ballots are processed manually. Telephone voting is not available. There are open issues for the SEC and others to consider with respect to the order of nominees and whether dissident nominees can be highlighted or differentiated in some way on the proxy card (e.g., in the event that the nominees are listed in alphabetical order).

<sup>9</sup> *Comptroller Stringer, NYC Pension Funds Launch National Campaign to Give Shareowners a True Voice in How Corporate Boards Are Elected*, news release (Nov. 6, 2014), [available here](#).

<sup>10</sup> *Comptroller Stringer, New York City Funds, Announce Expansion of Boardroom Accountability Project*, news release (Jan. 11, 2016), [available here](#).

<sup>11</sup> BlackRock, *2015 Proxy Voting Guidelines for U.S. Securities* (Feb. 2015) at 7, [available here](#).

<sup>12</sup> *CalPERS Highlights Outcome of Proxy Voting Initiatives*, news release (Jul. 22, 2015), [available here](#).

<sup>13</sup> CalSTRS, *Corporate Governance Principles* (Apr. 3, 2015) at 13, [available here](#).

<sup>14</sup> State Street Global Advisors, *US Proxy Voting and Engagement Guidelines* (Mar. 2015) at 4, [available here](#).

<sup>15</sup> See Remarks by Bess Joffe of TIAA-CREF, *Proxy Access: The Halftime Show*; webcast panel hosted by TheCorporateCounsel.net (Mar. 24, 2015).

<sup>16</sup> T. Rowe Price, *Proxy Voting Policies*, [available here](#).

<sup>17</sup> *Carpenters Suggests Zombie Director Trigger for Using Proxy Access*, CII Governance Alert (Oct. 15, 2015).

<sup>18</sup> Vanguard, *Proxy Voting Guidelines*, [available here](#), and Vanguard, *Our Proxy Voting and Engagement Efforts: An Update* (for the 12 months ended June 30, 2015), [available here](#).

<sup>19</sup> Fidelity, *Corporate Governance and Proxy Guidelines*, [available here](#).

<sup>20</sup> Council of Institutional Investors, *Corporate Governance Policies* (last updated Apr. 1, 2015), [available here](#).

<sup>21</sup> Council of Institutional Investors, *Proxy Access: Best Practices* (Aug. 2015), [available here](#).

<sup>22</sup> *Investor Group Challenges Access to Companies’ Boards*, Wall Street Journal (Aug. 4, 2015), [available here](#).

<sup>23</sup> Broadridge Financial Solutions and PricewaterhouseCoopers, *2015 Proxy Season Wrap-up* (3<sup>rd</sup> ed. 2015), [available here](#).

<sup>24</sup> ISS, *2016 U.S. Summary Proxy Voting Guidelines* (Dec. 18, 2015) at 22, [available here](#).

<sup>25</sup> ISS launched its annual policy survey ([available here](#)) in August 2015 asking: If a board adopts proxy access with material restrictions not contained in a majority-supported shareholder proposal, which types of restrictions should be viewed as problematic enough to call into question the board’s responsiveness and potentially warrant “withhold” or “against” votes against directors? See Sidley Update, *ISS 2016 Proxy Voting Policy Formulation Underway* (Aug. 13, 2015), [available here](#). ISS provided the following examples of “potentially problematic” restrictions:

- Ownership thresholds in excess of 3% or 5%.
- Ownership duration greater than three years.
- Aggregation limit of less than 20 shareholders.
- Cap on proxy access nominees set at less than 20% of the existing board (rounded down).
- More restrictive advance notice requirements.
- Information disclosures that are more extensive than those required of the company’s nominees, by the company, the SEC or relevant exchanges.
- Re-nomination restrictions in the event a proxy access nominee fails to receive a stipulated level of support or withdraws his or her nomination.
- Restrictions on compensation of proxy access nominees by nominating shareholders.

In September 2015, ISS published the results of its annual policy survey. ISS, *2015-2016 ISS Global Policy Survey – Summary of Results* (Sep. 28, 2015) at 8 and 19, [available here](#). A majority of investor respondents were of the view that ISS should issue negative vote recommendations against directors if the ownership threshold exceeds 3% (72% of investor respondents) or 5% (90%), if the holding period exceeds 3 years, if the size of the nominating group is fewer than 20 and/or if the cap on the number of proxy access nominees is less than 20% of the current board size. Company respondents generally did not agree that directors should be penalized for imposing restrictions on proxy access after shareholders had approved a shareholder proxy access proposal, although a slight majority agreed that votes against directors could be warranted if the company established an ownership threshold greater than 5%.

<sup>26</sup> ISS, *U.S. Proxy Voting Policies and Procedures (Excluding Compensation-Related) – Frequently Asked Questions* (last updated Dec. 18, 2015) at 19 and 28, [available here](#).

<sup>27</sup> ISS, *ISS Governance QuickScore 3.0* (last updated Oct. 30, 2015), [available here](#).

<sup>28</sup> Glass Lewis, *2016 Proxy Season Proxy Paper Guidelines: United States* at 21 and 22, [available here](#), and Glass Lewis, *2016 Proxy Season Proxy Paper Guidelines: Shareholder Initiatives* at 3 and 6, [available here](#).

<sup>29</sup> Whole Foods Market, Inc., SEC No-Action Letter (Dec. 1, 2014), [available here](#).

<sup>30</sup> *No-Action Relief Regarding Conflicting Proposals to Be Unavailable During 2015 Proxy Season*, Sidley Update (Jan. 21, 2015), [available here](#).

<sup>31</sup> *Statement from Chair White Directing Staff to Review Commission Rule for Excluding Conflicting Proxy Proposals* (Jan. 16, 2015), [available here](#), and *Letter from the SEC's Division of Corporation Finance to James McRitchie* (Jan. 16, 2015), [available here](#). Prior to its annual meeting (which it postponed to September 2015), effective June 26, 2015, Whole Foods' Board of Directors approved bylaw amendments giving an eligible shareholder, or group of up to 20 shareholders, owning 3% or more of the company's stock for at least three years the right to nominate and include in the company's proxy materials directors constituting up to 20% of the board seats (but not less than one director). Mr. McRitchie withdrew his proposal, even though he had sought a 25% cap on the number of board seats and no limit on the number of participants comprising a nominating group.

<sup>32</sup> *Building Meaningful Communication and Engagement with Shareholders*, Speech by SEC Chair Mary Jo White to the Society of Corporate Secretaries and Governance Professionals (Jun. 25, 2015), [available here](#).

<sup>33</sup> SEC Staff Legal Bulletin No. 14H (CF), *Shareholder Proposals* (Oct. 22, 2015), [available here](#).

<sup>34</sup> *SEC Issues New Guidance on Excludability of Shareholder Proposals*, Sidley Update (Oct. 23, 2015), [available here](#).

<sup>35</sup> General Electric Company, SEC No-Action Letter (Mar. 3, 2015), [available here](#).

<sup>36</sup> NVR, Inc., SEC No-Action Letter (Dec. 23, 2015), [available here](#).

<sup>37</sup> In 2014, 18 shareholder proxy access proposals were voted on and averaged support of approximately 34% of votes cast. Five proposals passed, each of which included a 3% for three years ownership requirement. The eight proposals that deviated from that formulation received average support of only 9% of votes cast.

<sup>38</sup> The Appendix does not include the terms of proxy access bylaws adopted by four companies so far in 2016 (as of January 14):

- Duke Energy Corporation (January 4, 3%, 3 years, group size limit of 20, 20% of Board (not less than 2 directors)).
- Alexion Pharmaceuticals, Inc. (January 8, 3%, 3 years, group size limit of 20, 20% of Board (not less than 2 directors)).
- Corrections Corporation of America (January 8, 3%, 3 years, group size limit of 20, 25% of Board (not less than 2 directors)).
- PepsiCo, Inc. (January 11, 3%, 3 years, group size limit of 20, 20% of Board (not less than 2 directors)).

Duke Energy, Alexion Pharmaceuticals and PepsiCo had received proxy access proposals from Comptroller Stringer's office.

<sup>39</sup> Current Report on Form 8-K filed with the SEC by Monsanto Company on January 11, 2016, [available here](#).

<sup>40</sup> *Recent Press on Proxy Access*, blog post by James McRitchie (Aug. 4, 2015), [available here](#); and *Apple Adopts Proxy Access Lite*, blog post by James McRitchie (Dec. 24, 2015), [available here](#).

<sup>41</sup> *Avoiding Proxy Access Lite: QUALCOMM Proposal*, blog post by James McRitchie (Sep. 23, 2015), [available here](#).

<sup>42</sup> Webcast of a meeting of the SEC Investor Advisory Committee (Jul. 16, 2015), [available here](#).

<sup>43</sup> *Dialogue with the Director of the Division of Corporation Finance*, Comments by Keith F. Higgins to the American Bar Association Business Law Section Annual Meeting (Sep. 18, 2015).

<sup>44</sup> CFA Institute Report on Proxy Access at Appendix D, citing a study by Jun Yang, Zengxiang Wang, and Yunbi An, *An Empirical Analysis of Canadian Shareholder Proposals* (Jul. 20, 2009), [available here](#).

<sup>45</sup> CFA Institute Report on Proxy Access at 17-21.

## Appendix – Proxy Access Provisions Adopted in 2015

PART A – SUMMARY OF CIRCUMSTANCES OF ADOPTION		
Circumstances	# of Companies (118 total)	Company Names
<b>Other/Unknown</b> (This category would include, among other circumstances, voluntary board adoption without receipt of a shareholder proposal)	45	Abbott Laboratories, Aflac, Alaska Air, Allstate, Altria Group, AIG, Amerisource Bergen, Applied Materials, Archer-Daniels-Midland, AT&T, The Bank of New York Mellon, Baxter International, Capital One, CarMax, Corning, CSX Corp., Dun & Bradstreet, Ecolab, Edison Int'l, Flowserve, General Dynamics, Gilead Sciences, Illinois Tool Works, Int'l Flavors & Fragrances, Kimberly-Clark, Merck, MetLife, Mondelēz Int'l, Morgan Stanley, Northrop Grumman, Oshkosh, Philip Morris Int'l, PPG Industries, The Progressive Corp., Prudential Financial, Public Service Enterprise Group, Regency Centers, Sempra Energy, Spectra Energy, State Street Corp., T. Rowe Price Group, Target Corp., United Technologies, Visa Inc., Windstream Holdings
<b>Shareholder proposal withdrawn or excluded</b>	26	3M, Ameren, Bank of America, Biogen, Boeing, Broadridge Financial Solutions, Caterpillar, Clorox, Dominion Resources, FirstMerit, General Electric, H&R Block, Honeywell Int'l, Kindred Healthcare, McKesson, Microsoft, Pfizer, QUALCOMM, Staples, United Natural Foods, Union Pacific Corp., United Therapeutics, VEREIT, Wells Fargo & Co., Whole Foods Market, YUM! Brands
<b>After majority-supported shareholder proposal</b>	23	American Electric Power Company, Anadarko Petroleum, AvalonBay Communities, Big Lots, Cheniere Energy, Chevron, Cimarex Energy, Citigroup, ConocoPhillips, DTE Energy, EOG Resources, EQT Corp., Equity Residential, Hasbro, Hess Corp., Kohl's, McDonald's, Monsanto, Occidental Petroleum, PPL Corp.*, SLM Corp., Southwestern Energy, TCF Financial
<b>After shareholder proposal failed at prior annual meeting</b>	10	Apple, Coca-Cola, Goldman Sachs, Level 3 Communications, Noble Energy**, NVR, Inc.**, Peabody Energy*, Pioneer Natural Resources, VCA Inc., Walgreens Boots Alliance
<b>Prior to vote on shareholder proposal (and proposal failed)</b>	5	Arch Coal, Boston Properties, Cabot Oil & Gas**, New York Community Bancorp**, Rite Aid
<b>Prior to vote on shareholder proposal (and proposal passed)</b>	4	CF Industries Holdings, HCP, Inc.**, Marathon Oil, The Priceline Group
<b>After shareholder proposal passed in 2015 and competing management proposal failed</b>	2	The AES Corporation*, Cloud Peak Energy
<b>In connection with spin-off</b>	2	Hewlett Packard Enterprise Company ( <i>spun-off from parent company that had adopted</i> ), PayPal Holdings ( <i>majority-approved shareholder proposal at prior parent company annual meeting</i> )
<b>After management proposal passed in 2015 and competing shareholder proposal failed</b>	1	SBA Communications**

\* Denotes companies where Comptroller Stringer's office resubmitted a proxy access proposal for the 2016 proxy season that was subsequently withdrawn after the company adopted.

\*\* Denotes companies where Comptroller Stringer's office resubmitted a proxy access proposal for the 2016 proxy season after the company adopted proxy access at a 5% ownership threshold.



## Appendix – Proxy Access Provisions Adopted in 2015

PART B – SELECT TERMS OF PROXY ACCESS PROVISIONS													
Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Must Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
<b>TOTALS</b> (out of 118 companies)	<u>3%:</u> 108 (92%)  <u>5%:</u> 10 (8%)	<u>20%:</u> 104 (88%)  <u>25%:</u> 14 (12%)	<u>1:</u> 1 (1%)  <u>5:</u> 1 (1%)  <u>10:</u> 4 (3%)  <u>15:</u> 3 (3%)  <u>20:</u> 105 (89%)  <u>25:</u> 2 (2%)  <u>None:</u> 2 (2%)	<u>Yes:</u> 99 (84%)  <u>No:</u> 19 (16%)	<u>Yes:</u> 46 (39%)  <u>No:</u> 72 (61%)	<u>Yes:</u> 28 (24%)  <u>No:</u> 90 (76%)	<u>90-120:</u> 3 (3%)  <u>120-150:</u> 83 (70%)  <u>120-180:</u> 1 (1%)  <u>120:</u> 7 (6%)	<u>75-100:</u> 1 (1%)  <u>90:</u> 2 (2%)  <u>90-120:</u> 12 (10%)  <u>120-150:</u> 9 (8%)	96 (81%)	36 (31%)	92 (78%)	92 (78%)	N/A
SEC Vacated Rule 14a-11 (for reference)	3% for 3 years	25%	None	Yes, must be recalled to count as owned	Yes, required statement of intent to continue ownership after election	N/A – neither disclosure nor prohibition of comp. arrgmts. was included in 14a-11	120-150		Nominating SH nominates any nominee		No creeping control limitations or nominating shareholder freeze-out based on % support	No nominee freeze-out based on % support	

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
3M Company (11/10/15)	3%	20% (at least 2)	20	Yes	No	No	90 – 120			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Adopted and shareholder proposal was withdrawn or excluded
Abbott Laboratories (12/11/15)	3%	20% (at least 1)	20	Yes	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> <li>Successful nominating shareholder may not nominate (2 years)</li> <li>Nominating shareholder may not nominate if nominee received &lt; 25% support (1 year)</li> </ul>	25% (2 years)	Other/Unknown
The AES Corporation (11/25/15)	3%	20%	20	Yes	Yes	No		120 – 150	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Adopted after shareholder proposal passed in 2015 and competing proposal failed
Aflac Incorporated (11/10/15)	3%	20%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Other/Unknown

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Alaska Air Group, Inc. (12/9/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Other/Unknown
The Allstate Corporation (11/19/15)	3%	20%	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	10% (2 years)	Other/Unknown
Altria Group, Inc. (10/28/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
Ameren Corporation (12/11/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
American Electric Power Company, Inc. (10/20/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
American International Group, Inc. (11/16/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
AmerisourceBergen Corporation (11/12/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Other/Unknown
Anadarko Petroleum Corporation (9/15/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Apple Inc. (12/21/15)	3%	20%	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.)</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
Applied Materials, Inc. (12/8/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	20% (2 years)	
Arch Coal, Inc. (2/26/15)	5%	20%	20	No	Yes	No	120 – 150		Any SH nominates such proxy access nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal failed)
Archer-Daniels-Midland Company (11/5/15)	3%	20%	20	No	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
AT&T Inc. (12/18/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
AvalonBay Communities, Inc. (11/12/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
Bank of America Corporation (3/17/15)	3%	20%	20	Yes	Yes	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	20% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
The Bank of New York Mellon Corporation (10/13/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
Baxter International Inc. (12/18/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates a proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (3 years)	Other/Unknown
Big Lots, Inc.* (4/14/15)	3%	25%	None	No	No	Yes (candidacy fees and fees for service prohibited)	120 – 150				<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Biogen Inc. (3/27/15)	3%	25% (at least 1)	20	No	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates such proxy access nominee	Unavailable if = or > 50% of directors up for election	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
The Boeing Company (12/14/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Boston Properties, Inc. (2/24/15)	3%	25%	5	No	No	Yes (fees for service prohibited)	120		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (indefinitely)</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal failed)

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Broadridge Financial Solutions, Inc. (7/2/15)	3%	25%	20	Yes	No	Yes (fees for service prohibited)		120 – 150	Any SH nominates any nominee	Unavailable if = or > 30% of directors up for election	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Cabot Oil & Gas Corporation (3/11/15)	5%	20%	10	No	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal failed)
Capital One Financial Corporation (10/5/15)	3%	20% (at least 2)	20	Yes	Yes (through term of director's service)	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Other/Unknown
CarMax, Inc. (12/8/15)	3%	20%	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Other/Unknown
Caterpillar Inc. (12/9/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
CF Industries Holdings, Inc. (2/4/15 and amended as of 10/14/15)	3%	25%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal passed)

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Cheniere Energy, Inc. (12/9/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Chevron Corporation (9/30/15)	3%	20% (at least 2)	20	Yes	No	Yes (candidacy fees OK but fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Cimarex Energy Co. (11/11/15)	3%	25%	20	Yes	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (3 years after board nom.) but not &lt; 1</li> <li>Successful advance notice nominees count vs. cap (2 years)</li> </ul>	20% (2 years)	Adopted after majority-supported shareholder proposal
Citigroup Inc. (10/22/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
The Clorox Corporation (8/28/15)	3%	20%	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	20% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Cloud Peak Energy Inc. (10/20/15)	3%	20% (at least 1)	20	Yes	No	No	120 – 150		Any SH nominates such proxy access nominee	Reduces Board Cap AND unavailable if = or > 50% of directors up for election	• N/A	N/A	Adopted after shareholder proposal passed in 2015 and competing proposal failed
The Coca-Cola Company (9/2/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		• N/A	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
ConocoPhillips (10/9/15)	3%	20% (at least 2)	20	Yes	Yes	Yes (may omit nominee who breaches rep about no comp. arrgmts. for fees for service)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>• Successful proxy access nominees count vs. cap (3 years)</li> <li>• Nominees pursuant to agreement count vs. cap</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
Corning Incorporated (12/7/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>• Successful proxy access nominees count vs. cap (2 years)</li> <li>• Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	10% (2 years)	Other/Unknown



## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
CSX Corporation (10/7/15)	3%	20% (at least 2)	20	Yes	No	No	120		Nominating SH nominates any nominee OR any SH nominates a proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
Dominion Resources, Inc. (12/17/15)	3%	20% (at least 2)	20	Yes	No	Yes (candidacy fees OK if disclosed but fees for service prohibited)	120 – 150		Any SH nominates such proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
DTE Energy Company (9/17/15)	3%	20% (at least 2)	20	Yes	No	No		120 – 150	Nominating SH nominates any nominee OR any SH nominates a proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
The Dun & Bradstreet Corporation (12/3/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Other/Unknown

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Ecolab Inc. (12/3/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Other/Unknown
Edison International (12/10/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 180		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
EOG Resources Inc. (9/22/15)	3%	20%	20	Yes	No	No	90 – 120			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	10% (2 years)	Adopted after majority-supported shareholder proposal
EQT Corporation (10/14/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
Equity Residential (10/1/15)	3%	20%	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
FirstMerit Corporation* (4/15/15)	3%	20%	20	No	Yes	No		90	Any SH nominates a proxy access nominee		<ul style="list-style-type: none"> <li>Successful nominating shareholder may not nominate if &gt; 20% of board consists of candidates previously submitted by it or its affiliates</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Flowserve Corporation (12/14/15)	5%	20% (at least 2)	20	Yes	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates a proxy access nominee	Unavailable if = or > 50% of directors up for election	• N/A	25% (2 years)	Other/Unknown
General Dynamics Corporation (12/2/15)	3%	20%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (3 years)	25% (2 years)	Other/Unknown
General Electric Company (2/6/15)	3%	20%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		• N/A	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Gilead Sciences, Inc. (12/23/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	25% (2 years)	Other/Unknown
The Goldman Sachs Group, Inc. (10/23/15)	3%	20% (at least 2)	15	Yes	Yes	No	120 – 150		Any SH nominates any nominee		• Successful nominating shareholder may not nominate (2 years)	20% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
H&R Block, Inc. (7/14/15)	3%	20%	20	Yes	No	No		90 – 120	Any SH nominates any nominee	Reduces Board Cap	• N/A	25% (1 year)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Hasbro, Inc. (10/1/15 and amended as of 12/10/15)	3%	20% (at least 2)	20	Yes	No	No		90 – 120	Nominating SH nominates any nominee		• N/A	25% (2 years)	Adopted after majority-supported shareholder proposal
HCP, Inc. (2/8/15)	5%	20%	10	No	Yes	No	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal passed)
Hess Corporation (11/4/15)	3%	20% (at least 2)	20	Yes	No	No		90		Reduces Board Cap	• Successful proxy access nominees count vs. cap (2 years after board nom.)	N/A	Adopted after majority-supported shareholder proposal
Hewlett Packard Enterprise Company (11/1/15)	3%	20%	20	No	No	No		120 – 150	Any SH nominates any nominee		• N/A	25% (2 years)	In connection with spin-off from parent company that had adopted
Honeywell International Inc. (12/11/15)	3%	20% (at least 2)	20	Yes	Yes	Yes (may omit nominee who breaches rep about no comp. arrgmts. for fees for service)	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Illinois Tool Works Inc. (12/11/15)	3%	25% (at least 2)	20	Yes	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>• Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>• Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Other/Unknown

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
International Flavors & Fragrances Inc. (12/15/15)	3%	20%	20	Yes	No	No		90 – 120	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
Kimberly-Clark Corporation (12/14/15)	3%	20% (at least 2)	20	Yes	No	No		75 – 100		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Other/Unknown
Kindred Healthcare, Inc. (10/29/15)	3%	20% (at least 2)	20 (25 if mkt. cap > \$2.5B)	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Adopted and shareholder proposal was withdrawn or excluded
Kohl's Corporation (11/11/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Level 3 Communications, Inc. (11/12/15)	3%	20% (at least 1)	20	No	No	No	120 – 150		Any SH nominates such proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
Marathon Oil Corporation (4/9/15 and amended as of 9/1/15)	3%	25%	20	No	Yes	Yes (fees for service prohibited)	90 – 120		Any SH nominates such proxy access nominee	Unavailable if = or > 50% of directors up for election	<ul style="list-style-type: none"> <li>Successful nominating shareholder may not nominate</li> <li>(2 years)</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal passed)

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
McDonald's Corporation (10/26/15)	3%	20% (at least 2)	20	Yes	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
McKesson Corporation* (7/29/15)	3%	20%	20	Yes	No	No		120 – 150	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Merck & Co., Inc. (7/22/15)	3%	20%	20	Yes	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Other/Unknown
MetLife, Inc. (12/8/15)	3%	20% (at least 2)	20	Yes	Yes	No		120 – 150	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Other/Unknown
Microsoft Corporation (8/7/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Mondelēz International, Inc. (10/1/15)	3%	20% (at least 2)	20	Yes	No	No	120		Nominating SH nominates any nominee OR any SH nominates a proxy access nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
Monsanto Company (6/5/15 and amended as of 1/11/16)	3%	20%	20	Yes	No	No	120 – 150		Any SH nominates such proxy access nominee	Unavailable if = or > 50% of directors up for election	<ul style="list-style-type: none"> <li>N/A</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
Morgan Stanley (10/29/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Nominating SH nominates any nominee	Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
New York Community Bancorp, Inc. (3/17/15)	5%	20% (at least 1)	10	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal failed)
Noble Energy, Inc. (10/20/15)	5%	20%	20	No	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Northrop Grumman Corporation (12/4/15)	3%	20% (at least 2)	20	Yes	No	Yes (candidacy fees OK if disclosed but fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
NVR, Inc. (11/6/15)	5%	20%	20	Yes	Yes	Yes (may omit nominee who breaches rep about no comp. arrgmts. for fees for service)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
Occidental Petroleum Corporation (10/8/15)	3%	20% (at least 2)	20	Yes	Yes	Yes (may omit nominee who breaches rep about no comp. arrgmts. for fees for service)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access or advance notice nominees count vs. cap (3 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Oshkosh Corporation (11/13/15)	5%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown



## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
PayPal Holdings, Inc. (7/17/15)	3%	20%	15	No	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years) but not &lt; 1</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	10% (2 years)	Majority-approved shareholder proposal at prior parent company annual meeting
Peabody Energy Corporation (12/10/15)	3%	20% (at least 2)	20	Yes	No	No		90 – 120		Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	10% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
Pfizer Inc. (12/14/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Philip Morris International Inc. (9/16/15)	3%	20%	15	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Other/Unknown
Pioneer Natural Resources Company (11/19/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access or advance notice nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
PPG Industries, Inc. (12/10/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (3 years after board nom.) but not &lt; 1</li> <li>Successful advance notice nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown
PPL Corporation (12/18/15)	3%	20% (at least 2)	25	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	N/A	Adopted after majority-supported shareholder proposal
The Priceline Group Inc. (3/18/15 and amended as of 7/23/15 and 11/4/15)	3%	25%	None	Yes	Yes (following the annual meeting)	Yes (fees for service prohibited)	120 – 150		Nominating SH nominates any nominee OR any SH nominates such proxy access nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal passed)
The Progressive Corporation (8/7/15)	3%	20% (at least 1)	20	Yes	No	No	120			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.)</li> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Other/Unknown

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Prudential Financial, Inc. (3/10/15)	3%	20%	20	Yes	Yes	No		120 – 150	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Other/Unknown
Public Service Enterprise Group Incorporated (12/15/15)	3%	25%	20	Yes	No	No	120 – 150		Nominating SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	N/A	Other/Unknown
QUALCOMM Incorporated (12/7/15)	3%	20%	20	No	Yes	Yes (indemnification and expense reimbursement relating to candidacy OK but fees for service prohibited)	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Regency Centers Corporation (7/15/15)	3%	25%	1	No	No	Yes (fees for service prohibited)	120		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (indefinitely)</li> </ul>	25% (2 years)	Other/Unknown
Rite Aid Corporation (4/15/15)	3%	20%	20	No	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted prior to vote on shareholder proposal (and proposal failed)
SBA Communications Corporation (7/28/15)	5%	20% (at least 1)	10	No	No	No	120		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> <li>While board is classified, # of proxy access nominees may not &gt;50% of directors to be elected</li> </ul>	25% (3 years)	Adopted after management proposal passed in 2015 and competing shareholder proposal failed

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Sempra Energy (12/15/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Other/Unknown
SLM Corporation* (6/25/15)	3%	25% (at least 1)	20	No	No	No		90 – 120	Any SH nominates such proxy access nominee	Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Southwestern Energy Company (11/9/15)	3%	20% (at least 2)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Adopted after majority-supported shareholder proposal
Spectra Energy Corp. (11/4/15)	3%	20%	20	Yes	No	Yes (candidacy fees OK if disclosed but fees for service prohibited)		90 – 120	Any SH nominates such proxy access nominee	Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Other/Unknown
Staples, Inc. (12/1/15)	3%	20% (at least 2)	25	Yes	No	No		90 – 120	Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	15% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
State Street Corporation (10/15/15)	3%	20%	20	Yes	No	No		120 – 150	Nominating SH nominates any nominee OR any SH nominates such proxy access nominee	Reduces Board Cap	• N/A	25% (2 years)	Other/Unknown
T. Rowe Price Group, Inc. (12/10/15)	3%	20% (at least 2)	20	Yes	No	Yes (fees for service prohibited)	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	25% (2 years)	Other/Unknown
Target Corporation (11/11/15)	3%	20% (at least 2)	20	Yes	No	Yes (candidacy fees OK if disclosed but fees for service prohibited)	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	25% (2 years)	Other/Unknown
TCF Financial Corporation (10/19/15)	3%	25%	20	No	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years)	N/A	Adopted after majority-supported shareholder proposal
Union Pacific Corporation (11/19/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		• Successful proxy access nominees count vs. cap (2 years) • Nominees pursuant to agreement count vs. cap	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
United Natural Foods, Inc. (10/23/15)	3%	20%	20	Yes	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates such proxy access nominee	Reduces Board Cap AND unavailable if = or > 50% of directors up for election	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (3 years after board nom.)</li> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
United Technologies Corporation (9/9/15)	3%	20% (at least 1)	20	Yes	No	No	120 – 150			Reduces Board Cap	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (2 years after board nom.) but not &lt; 1</li> </ul>	N/A	Other/Unknown
United Therapeutics Corporation (4/29/15)	3%	20% (25% if < 10)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (if mid-term and not up for election)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
VCA Inc. (10/29/15)	5%	20% (at least 1)	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years)</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
VEREIT, Inc. (8/5/15 with 1/1/16 effective date)	3%	25%	20	Yes	No	Yes (fees for service prohibited)	120		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (indefinitely)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
Visa Inc. (10/30/15)	3%	20%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> <li>Nominees pursuant to agreement count vs. cap</li> </ul>	25% (2 years)	Other/Unknown
Walgreens Boots Alliance, Inc. (10/14/15)	3%	20%	20	Yes	Yes	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>N/A</li> </ul>	25% (2 years)	Adopted after shareholder proposal failed at prior annual meeting
Wells Fargo & Company (12/17/15)	3%	20% (at least 2)	20	Yes	No	No	120 – 150		Any SH nominates any nominee		<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years after board nom.)</li> </ul>	N/A	Adopted and shareholder proposal was withdrawn or excluded
Whole Foods Market, Inc. (6/26/15)	3%	20% (at least 1)	20	Yes	Yes	Yes (fees for service prohibited)	120 – 150		Any SH nominates such proxy access nominee	Reduces Board Cap AND unavailable if = or > 50% of directors up for election	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (3 years after board nom.)</li> <li>Nominees pursuant to agreement count vs. cap (3 years after board nom.)</li> <li>Successful nominating shareholder may not nominate (2 years)</li> </ul>	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded
Windstream Holdings, Inc. (11/19/15)	3%	20% (at least 2)	20	Yes	No	Yes (fees for service prohibited)	120 – 150		Any SH nominates such proxy access nominee	Unavailable if = or > 30% of directors up for election	<ul style="list-style-type: none"> <li>Successful proxy access nominees count vs. cap (2 years)</li> </ul>	N/A	Other/Unknown

## Appendix – Proxy Access Provisions Adopted in 2015

Company	Key Parameters			Other Ownership Requirements		Third-Party Compensation Arrangements Prohibited	Nomination Deadline (Annual Meeting)		Proxy Access Unavailable if Advance Notice Nomination		Creeping Control Limitation	Restrictions on Renominating Proxy Access Nominees Based on % Support	Circumstances of Adoption
	Ownership Threshold (3 years)	Cap (Max. % of Board)	Group Size Limit	Loaned Shares Count as "Owned"	Hold Shares Past Mtg. Date (1 Year Unless Noted)		Days Prior to Proxy Date / Release Ann'y	Days Prior to Annual Mtg. Ann'y	Blanket Exclusion	Depends on # of Advance Notice Nominees			
YUM! Brands Inc. (9/18/15)	3%	20%	20	Yes	Yes	Yes (may omit nominee who breaches rep about no comp. arrgmts. for fees for service)	120 – 150		Any SH nominates such proxy access nominee	Unavailable if = or > 50% of directors up for election	• N/A	25% (2 years)	Adopted and shareholder proposal was withdrawn or excluded

\* Denotes companies that adopted proxy access pursuant to a shareholder-approved bylaw.