

October 1, 2020

SEC ADOPTS AMENDMENTS TO MODERNIZE THE SEC'S SHAREHOLDER PROPOSAL RULES

To Our Clients and Friends:

On September 23, 2020, the Securities and Exchange Commission (the "Commission") voted to adopt amendments (the "Amended Rules") (available [here](#))¹ to key aspects of the Commission's shareholder proposal rule. The Amended Rules:

- modestly increase the current stock ownership threshold to submit a shareholder proposal for shareholders who have not held a company's stock for at least three years;
- expand the procedural requirements on the submission of proposals, including changes to limit abuse of the process when non-shareholders submit a "proposal by proxy;"
- change the rules to apply the one-proposal rule to each person instead of each shareholder, thereby limiting representatives to one proposal per meeting; and
- increase the levels of shareholder support a shareholder proposal must receive in order to be eligible for resubmission at future meetings.

While the Amended Rules will be effective 60 days after publication in the Federal Register, they only apply to shareholder proposals submitted for an annual or special meeting held on or after January 1, 2022, and thus will not affect the upcoming proxy season.

The Amended Rules represent the first substantive amendments to the shareholder proposal resubmission and stock ownership thresholds since 1954 and 1998, respectively. The Amended Rules are substantially the same as the amendments proposed by the Commission in November 2019 (the "Proposed Rules") (available [here](#)), but reflect amendments made in response to concerns raised on the Proposed Rules. Among other changes, the Amended Rules include a transition period ensuring that any shareholder who currently satisfies the ownership eligibility rules may continue to do so and do not include the "momentum requirement," which would have permitted exclusion of a previously voted on proposal if the level of voting support had declined significantly in the most recent vote.²

¹ For a comparison of the Amended Rules with the current rules, see [Attachment A](#) to this client alert.

² The Proposed Rules included a "momentum requirement" that would have allowed companies to exclude shareholder proposals submitted three or more times in the preceding five years if they received less than 50%

The Amended Rules were approved by a 3-2 vote, with the majority viewing the Amended Rules as “reasonable and limited”³ steps to “adjust these rules to reflect our current markets.”⁴ As Chairman Jay Clayton explained, the Amended Rules are intended as a “restructuring and recalibrating [of] the current shareholder ownership threshold for initial submissions as well the shareholder support thresholds for resubmissions” in light of “the many changes in our markets over the past 30 plus years, as well as [the Commission’s] experience with the shareholder proposal process under Rule 14a-8.”⁵ At the same time, the Amended Rules reflect that shareholder proposals impose costs on companies and their shareholders, and that some shareholder proponents have effectively outsourced their involvement to representatives. As explained by Commissioner Roisman, “The amendments . . . aim to strike a better balance by ensuring that a shareholder who submits a proposal to a public company has interests that are more likely to be aligned with the other shareholders who bear the expense.” In contrast, Commissioners Crenshaw and Lee expressed concern that the Amended Rules will suppress the rights of shareholders, undermine environmental, social and governance (ESG) initiatives and dial back shareholder oversight of management.

Background

The Amended Rules are part of the Commission’s recent efforts to modernize the proxy process. In November 2018, the Commission staff hosted a roundtable to provide an opportunity for market participants to engage with the staff on various aspects of the proxy process (the “2018 Roundtable”).⁶ The 2018 Roundtable included panels addressing the regulation of proxy advisory firms, proxy voting mechanics and technology, and shareholder proposals. As a result of the 2018 Roundtable, the Commission received almost 300 unique comment letters and suggestions to improve the proxy process.⁷

of the vote and support declined by 10% or more compared to the immediately preceding shareholder vote on the proposal.

- ³ Commissioner Hester M. Peirce, “Statement at Open Meeting on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/peirce-14a-8-09232020>.
- ⁴ Commissioner Elad L. Roisman, “Statement on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/roisman-14a8-2020-09-23>.
- ⁵ Chairman Jay Clayton, “Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System” (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/clayton-shareholder-proposal-2020-09-23>.
- ⁶ See Securities and Exchange Commission, “Spotlight on Proxy Process” (Nov. 15, 2018), available at <https://www.sec.gov/proxy-roundtable-2018>.
- ⁷ See Chairman Jay Clayton, “Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System” (Nov. 5, 2019), available at <https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting>.

Following the 2018 Roundtable, Chairman Clayton announced that Commissioner Roisman would lead the Commission’s efforts to improve the proxy voting process and infrastructure.⁸ The Commission took its first action to address these comments and suggestions in August 2019, when it issued new guidance relating to proxy voting advice.⁹ Subsequently, in November 2019, a divided Commission voted 3-2 to approve the Proposed Rules, with Commissioner Lee and then-Commissioner Robert J. Jackson, Jr. dissenting.

The Commission’s approval of the Amended Rules comes nearly seven months after the end of the public comment period on the Proposed Rules, during which the Commission received several thousand comment letters, both in support of and in opposition to the Proposed Rules. Although the comment period closed in February 2020, the Commission continued to receive comment letters from various stakeholders through the middle of September.¹⁰ Notably, two commentators objected to the August 2020 release of analysis previously prepared by the Commission’s Division of Economic and Risk Analysis (available [here](#)) and requested that the Commission reopen the comment period prior to adoption of the Proposed Rules.¹¹

Summary of the Amended Rules

As noted above, the Commission amended three parts of Rule 14a-8: the eligibility requirements in Rule 14a-8(b); the “one proposal” rule in Rule 14a-8(c); and the proposal resubmission thresholds in Rule 14a-8(i)(12).

⁸ See Chairman Jay Clayton, “Remarks for Telephone Call with SEC Investor Advisory Committee Members” (Feb. 6, 2019), available at <https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-call-020619>.

⁹ See Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice, Exchange Act Release No. 34-86721 (Aug. 21, 2019), available at <https://www.sec.gov/rules/interp/2019/34-86721.pdf>; Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Advisers Act Release No. IA-5325 and Investment Company Act Release No. IC-33605 (Aug. 21, 2019), available at <https://www.sec.gov/rules/interp/2019/ia-5325.pdf>.

¹⁰ See, e.g., Letter from Senator Chris Van Hollen (June 25, 2020), available at <https://www.sec.gov/comments/s7-23-19/s72319-7418361-219655.pdf> (urging the Commission to refrain from finalizing the Proposed Rules pending the resolution of an investigation into fraudulent comment letters); Letter from Amy Borrus, Exec. Dir., Council of Institutional Investors, et al. (Sept. 4, 2020), available at <https://www.sec.gov/comments/s7-23-19/s72319-7741268-223144.pdf> (arguing that the Commission improperly excluded evidence on the impact of the Proposed Rules); Letter from Rep. Anthony Gonzalez and Rep. Bryan Steil (Sept. 15, 2020), available at <https://www.sec.gov/comments/s7-23-19/s72319-7777973-223454.pdf> (voicing support for the adoption of the Proposed Rules).

¹¹ See, Letter from Sen. Sherrod Brown (Aug. 21, 2020), available at <https://www.sec.gov/comments/s7-23-19/s72319-7707472-222890.pdf>; Letter from Amy Borrus, Exec. Dir., Council of Institutional Investors, et. al. (Sept. 4, 2020), available at <https://www.sec.gov/comments/s7-23-19/s72319-7741268-223144.pdf>;

1. Changes to the Eligibility Requirements in Rule 14a-8(b).

New Three-Tiered Ownership Thresholds and Transition Period

The current shareholder proposal rules, which were last reviewed and updated by the Commission in 1998, require a shareholder to continuously hold at least \$2,000 or 1% of a company's securities for at least one year to be eligible to submit a proposal under Rule 14a-8(b). The Amended Rules revise the ownership threshold and implement a tiered approach based upon the length of time the shares were held. Under this approach, the Amended Rules eliminate the 1% ownership standard and provide for the following three alternative thresholds:

- continuous ownership of at least \$2,000 of the company's securities for at least three years;
- continuous ownership of at least \$15,000 of the company's securities for at least two years; or
- continuous ownership of at least \$25,000 of the company's securities for at least one year.

Notably, the Amended Rules include a transition period that effectively allows shareholders who, as of the effective date of the Amended Rules, are eligible to submit proposals to maintain eligibility. Provided they continue to hold at least \$2,000 of a company's securities, such shareholders will continue to be eligible to submit shareholder proposals for all annual or special meetings held prior to January 1, 2023, after which time they will be able to rely on the three-year/\$2,000 ownership standard for eligibility.

In addition, the Amended Rules provide that multiple shareholders cannot aggregate their ownership in order to satisfy the eligibility thresholds.

Additional Procedural Requirements for Shareholder Proponents

The Amended Rules include two new procedural requirements designed to ensure that shareholders are personally and directly involved in the proposal process and to avoid the practice of shareholders effectively bestowing eligibility on non-shareholders through a process that has come to be referred to as "proposal-by-proxy." As stated by the Commission, these provisions "help safeguard the integrity of the shareholder-proposal process and the eligibility restrictions."¹²

First, any shareholder proponent who elects to use a representative for the purpose of submitting a proposal (commonly referred to as "proposal by proxy") must provide documentation to make clear that the representative is authorized to act on the shareholder proponent's behalf and to

¹² See Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Exchange Act Release, No. 34-89964 (Sept. 23, 2020) at Part II.B.3, *available at* <https://www.sec.gov/rules/final/2020/34-89964.pdf>.

provide a meaningful degree of assurance as to the shareholder proponent's identity, role and interest in the proposal.

Second, each shareholder proponent must affirmatively state that he or she is available to meet with the company, either in person or via teleconference, between 10 and 30 calendar days after the submission of the shareholder proposal. Each shareholder proponent must provide the company with contact information, as well as specific business days and times that the shareholder proponent is available to meet with the company to discuss the proposal. Although the shareholder proponent must provide his or her contact and information and must participate in the engagement with the company, a shareholder proponent's representative will also be able to participate in those discussions.

2. Changes to the "One Proposal" Rule in Rule 14a-8(c)

Under the current rules, each "shareholder" may submit no more than one proposal to a company for a particular meeting. However, it is possible (and not uncommon)¹³ for one representative to submit multiple proposals on behalf of individual shareholders at a single company for the same meeting.

Under the Amended Rules, Rule 14a-8(c)'s one-proposal standard will apply to each "person" who submits a proposal and include proposals that person submits "directly or indirectly" and a person "may not rely on the securities holdings of another person" for the purpose of submitting multiple proposals. As a result, a shareholder proponent may no longer submit one proposal in their own name and serve as a representative to submit a different proposal on another's behalf at the same meeting. Likewise, a representative could not act as a representative for two different proposals at the same meeting.

3. Increases to the Resubmission Thresholds in Rule 14a-8(i)(12)

Under the current rules, which were adopted in 1954, a company may exclude a shareholder proposal if a similar proposal was last included in the proxy materials within the preceding three years and if, the last time it was included it received:

- (i) less than 3% support, if proposed once within the last five years;
- (ii) less than 6% support, if proposed twice within the last five years; or
- (iii) less than 10% support, if proposed three or more times within the last five years.

The Amended Rules increase the thresholds under Rule 14a-8(i)(12) to 5%, 15% and 25%, respectively.

¹³ As noted by Commissioner Roisman in his statement in support of the Amended Rules, some data suggests that "[b]etween 2003 and 2014, only five people accounted for the vast majority of all the proposals submitted by individual shareholders." See Commissioner Elad L. Roisman, "Statement on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/roisman-14a8-2020-09-23>.

Notably, the Amended Rules do not include the “momentum requirement” that was set forth in the Proposed Rules. The momentum requirement would have imposed an additional standard on the resubmission of shareholder proposals by permitting companies to exclude shareholder proposals voted on three or more times in the last five years, notwithstanding having been supported by at least 25% of the votes cast, if (i) the proposal received less than 50% of the votes cast and (ii) the most recent vote reflected a decline in shareholder support of 10% or more from the prior vote.¹⁴

Practical Considerations

The Amended Rules are designed to address concerns that shareholders with *de minimis* financial interest in a company could submit the same proposals year after year even when they garnered very little support. The Amended Rules will also serve to curtail the often decried practice of shareholders submitting, or delegating to non-shareholders the power to submit, proposals without otherwise seeking to engage with the company regarding the proposal topic or having any other involvement with the matter, and prevent proponents from evading the one proposal rule by acting as a representative for different shareholders at the same company.

Practically, the modest increase in both the ownership and resubmission thresholds is unlikely to cause a dramatic decline in the number of shareholder proposals submitted and voted on. A long-term investor with only a \$2,000 investment will still be able to submit a shareholder proposal. Additionally, first time proposals that garner support from only 5% of the vote will still be allowed to be submitted for the next annual meeting.¹⁵ Thus, the Amended Rules are unlikely to have a significant impact on shareholders’ oversight of management or limit shareholder activism pertaining to ESG initiatives.

The more important changes are to narrow the loophole used by a few proponent representatives to submit more than one proposal to a single company and to require demonstrated involvement by any shareholder proponents relying on a representative to act as proxy. Both of these provisions address companies’ concern over whether proposals received from some representatives actually reflect the true shareholder’s views, or whether instead the shareholder has simply bestowed his or her ownership status on another person to pursue whatever issue that other person desires. Although the new requirements for documenting a representative’s authorization are similar to information called for under Staff Legal Bulletin 14I,¹⁶ incorporating

¹⁴ The “momentum requirement” appears to have been among the most controversial of the Proposed Rules, with some observers indicating that its omission was intended to “strike a compromise.” See Katanga Johnson and Jessica DiNapoli, *Investors expect reprieve on contentious U.S. shareholder voting rights rule*, REUTERS (Sept. 15, 2020), available at <https://www.reuters.com/article/ousivMolt/idUSKBN2663EF>.

¹⁵ According to ProxyMonitor.org, only 26 proposals received less than 5% support among those proposals voted on at Fortune 250 companies that had reported voting results as of September 30, 2020.

¹⁶ See Staff Legal Bulletin No. 14I (Nov. 1, 2017), available at <https://www.sec.gov/interps/legal/cfs1b14i.htm>. The new requirements differ from the information called for in the Staff’s guidance by requiring an express statement authorizing the designated representative to submit the proposal and act on the shareholder’s behalf and a statement that the shareholder supports the proposal, but requires only that the shareholder identify “the specific topic” of the proposal.

the standards into Rule 14a-8 should reinforce the ability to exclude improperly documented submissions.¹⁷

It is unclear whether there will be significant changes in the shareholder proposal dynamic as a result of the requirement that shareholder proponents state that they are able to meet with the company. Ideally, it will increase the opportunity for engagement and agreement over terms of withdrawal of a proposal in advance of the deadline for submitting no-action letters seeking exclusion of a proposal. However, it is uncertain whether it will result in an increase in actual engagements and withdrawals, and companies that choose to pursue meetings with proponents will likely need to double-track those meetings with work on no-action letters. The change is more likely to result in changes in the timing of submissions, leading proponents who intend to submit many proposals to submit them earlier and in advance of the holidays, and requiring greater coordination among co-proponents. However, the significance of the new provision will depend on how the Staff responds to situations where proponents misrepresent their availability to meet. Absent an enforcement mechanism to require shareholder proponents to engage in good faith discussions with companies, it is unclear whether the Amended Rules will ultimately result in increased engagement.

As a whole, the Amended Rules are helpful in ensuring that the shareholder proposal process is appropriately utilized by and reflects the input of shareholders and will help to reduce fringe cases of abuse. However, we do not expect them to significantly limit shareholders' ability to submit proposals and have those proposals voted on, and we expect that proponent representatives will continue to be actively involved in the process.

We note that the vote on the Amended Rules, like so many others that touch on social issues at the Commission, fell squarely along party lines. As a result, a change in the Presidential administration or in control of the Senate could result in these amendments being reversed in the future, including by a future Commission, through the Congressional Review Act or as a result of a future legal challenge.



Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. For additional information, please contact the Gibson Dunn lawyer with whom you usually work, any lawyer in the firm's [Securities Regulation and Corporate Governance](#) practice group, or the following authors:

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¹⁷ As described in our client alert on Shareholder Proposal Developments During The 2020 Proxy Season, available [here](#), during the 2020 proxy season the Staff declined to concur with three no-action requests seeking to exclude proposals based on deficient authorization letters.

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Comparison of the Amended Rules with the Current Rules

Rule 14a-8(b):

(1) ~~(b) Question 2: Who is To be~~ eligible to submit a proposal, ~~and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you~~ you must satisfy the following requirements:

(i) You must have continuously held ~~at:~~

(A) At least \$2,000 in market value, ~~or 1%,~~ of the company's securities entitled to ~~be~~ voted vote on the proposal for at ~~the meeting~~ least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year ~~by;~~ or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date ~~you submit the proposal.~~ that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold ~~those~~ the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the

prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) ~~(2)~~ If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders. ~~However~~

(ii) ~~If,~~ like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) ~~(i)~~ The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the ~~meeting of~~ shareholders' meeting for which the proposal is submitted; or

(B) ~~(ii)~~ The second way to prove ownership applies only if you ~~have~~ were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, ~~reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins~~ demonstrating that you meet at least one of the share ownership requirements

under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) ~~(A)~~ A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) ~~(B)~~ Your written statement that you continuously held ~~the required number of shares for the~~ at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one- year- period as of the date of the statement, respectively; and

(3) ~~(C)~~ Your written statement that you intend to continue ~~ownership of to hold~~ the ~~shares~~ requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], and you have continuously maintained a minimum investment of at least \$2,000 of such securities from [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

Rule 14a-8(c):

Question 3: How many proposals may I submit? Each ~~shareholder~~person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

Rule 14a-8(i)(12):

Resubmissions: If the proposal ~~deals with~~addresses substantially the same subject matter as ~~another~~a proposal, or proposals ~~that has or have been~~, previously included in the company's proxy materials within the preceding ~~5~~five calendar years, ~~a company may exclude it from its proxy materials for any meeting held~~ if the most recent vote occurred within ~~3~~the preceding three calendar years ~~of and~~ the last time it was included if the proposal received most recent vote was:

(i) Less than ~~3%~~5 percent of the ~~vote~~votes cast if ~~proposed once within the preceding 5~~calendar years previously voted on once;

(ii) Less than ~~6%~~15 percent of the ~~vote on its last submission to shareholders~~votes cast if ~~proposed twice~~ previously ~~within the preceding 5 calendar years~~voted on twice; or

(iii) Less than ~~10%~~25 percent of the ~~vote on its last submission to shareholders if proposed~~votes cast if previously voted on three ~~times~~ or more ~~previously within the preceding 5 calendar years;~~ ~~and~~times.