



SEC Staff Issues Guidance on Describing Shareholder Proposals on Proxy Cards

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Exchange Act Rule 14a-4(a)(3) requires that the form of proxy “identify clearly and impartially” each separate matter intended to be voted on, “whether proposed by the registrant or by security holders.” Accordingly, the C&DI notes that, just as it would not be appropriate to describe a management proposal to amend a company’s articles of incorporation to increase the number of authorized shares of common stock as “a proposal to amend our articles of incorporation,” it would be equally as inappropriate to describe a shareholder proposal to amend a company’s bylaws to allow shareholders holding 10 percent of the company’s common stock to call a special meeting as “a shareholder proposal on special meetings.”

The C&DI also highlights additional descriptions of shareholder proposals that would not satisfy Rule 14a-4(a)(3):

- a shareholder proposal on executive compensation
- a shareholder proposal on the environment
- a shareholder proposal, if properly presented
- shareholder proposal #3.

While the C&DI specifically addresses the level of detail that must be used when describing a shareholder proposal on the company’s proxy card, it follows that the Staff would hold similar views with respect to a company’s Notice of Internet Availability, which must contain a “clear and impartial identification of each separate matter intended to be acted on,” per Exchange Act Rule 14a-16(d)(6). Similarly, to the extent practicable, companies should cause brokers to conform the description of a shareholder proposal on the voting instruction form (“VIF”) that is distributed to street name shareholders to the description on the company’s proxy card (notwithstanding that the VIF technically is not subject to Rule 14a-4).

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