

SEC Approves Changes to Eligibility Requirements for Submitting Shareholder Proposals

September 29, 2020

The Securities and Exchange Commission (SEC) in a 3-2 vote on Wednesday, September 23, 2020, adopted amendments¹ to the eligibility requirements for submitting shareholder proposals to be included in a public company issuer's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, to increase the ownership and holding period thresholds for proposal submissions and previous support level requirements for resubmitted proposals.

New Three-Tiered Eligibility Requirements

Under the current version of Rule 14a-8(b), to be eligible to submit a proposal, a shareholder must have continuously held at least \$2,000 in market value, or one percent of the issuer's securities entitled to vote on the proposal, for at least one year by the date of submission of the proposal.

The amended version of Rule 14a-8(b) eliminates the eligibility threshold that the proposing shareholder holds one percent of the issuer's securities and creates three new eligibility tiers for submitting a proposal. The new eligibility tiers are based on (i) the market value of the securities held and (ii) the length of time that the shareholder has continuously held the required market value of the securities. If a shareholder can satisfy the requirements of any of the three tiers, he or she will be eligible to submit a proposal.

The following chart illustrates these eligibility threshold changes:

Amended Tiers	Minimum Market Value of Securities Held	Length of Continuous Holding Period
Amended Rule First Tier	\$2,000	Three Years
Amended Rule Second Tier	\$15,000	Two Years
Amended Rule Third Tier	\$25,000	One Year

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The SEC noted that existing shareholders who meet the eligibility threshold of \$2,000 in market value for a continuous one-year holding period at the effective time of the amendments, but do not meet any of the new thresholds, will continue to be eligible to submit proposals through the expiration of a transition period that will extend to all annual or special meetings held prior to January 1, 2023.

The amended rule also eliminates the ability of shareholders to aggregate their holdings for purposes of meeting the eligibility thresholds, requiring each member of a group of shareholders submitting a proposal to independently meet the eligibility requirements. In addition, the amended rule requires that proposals submitted by a shareholder representative must be signed by the shareholder and include certain information such as a shareholder's statement authorizing the designated representative to submit the proposal and a shareholder's statement supporting the proposal. Both shareholders and shareholder representatives will be limited to submitting one proposal to an issuer per shareholders' meeting pursuant to an amendment to Rule 14a-8(c). The amended rule will also require that each shareholder proponent submit a statement that he or she is able to meet with the issuer's management in person or via teleconference at specified dates and times that are no less than 10 calendar days, nor more than 30 calendar days, after the proposal is submitted.

New Proposal Resubmission Requirements

The SEC also amended the thresholds for the level of previous shareholder support required to resubmit a proposal if a proposal that was included in the issuer's proxy materials within the preceding five calendar years addressed substantially the same subject matter as the current proposal. Such a "resubmitted" proposal may be excluded from the issuer's proxy statement for any meeting held within three calendar years of the last time it was included, if the previously submitted proposal received less than the following levels of shareholder support:

Number of Times Proposal Voted on By Shareholders in the Previous Five Years²	<i>Current Rule</i>	<i>Amended Rule</i>
	Issuer May Exclude Proposal if Previous Proposal Received Less than the Following Percentages of the Votes Cast	Issuer May Exclude Proposal if Previous Proposal Received Less than the Following Percentages of the Votes Cast
Once	3% of the votes cast	5% of the votes cast
Twice	6% of the votes cast	15% of the votes cast
Three or More Times	10% of the votes cast	25% of the votes cast

Transition Period for Amendments

The amendments to Rule 14a-8 will become effective 60 days after they are published in the Federal Register and will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022, other than the continued

eligibility of current continuous holders of \$2,000 in market value of votable securities for all annual or special meetings held prior to January 1, 2023, as discussed above.

A comparison of the current Rule 14a-8 language to the amended language is available in Appendix I, available [here](#) (subject to final publication in the Federal Register).

¹ The adopting release is available at <https://www.sec.gov/rules/final/2020/34-89964.pdf>.

² The last vote must also have occurred within the last three years.

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