

## PROXY RULE DEBATE MOVES FORWARD

### *The financial crisis prompts the SEC to propose rule amendments regarding shareholder nominations of directors.*

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Washington, D.C. - The Security and Exchange Commission voted on May 20, 2009 to propose a broad series of rule amendments to allow shareholders to nominate directors on corporate and mutual fund boards. This rule proposal could quite possibly be a recipe for disaster for corporations and mutual fund companies alike.

"This proposal represents nearly seven years of debate about whether the federal proxy rules should support - or stand in the way of - shareholders exercising their fundamental right to nominate directors," said SEC Chairman Mary Schapiro. "Today marks the first step toward finally concluding that debate. While I recognize that there are passionate views on both sides of this issue, I hope that all interested parties will participate in the Commission's comment process. I am confident that the final rules we adopt will be better because of these comments."

Under current proxy rules, shareholder nominations do not make it onto corporate and mutual fund proxy ballots that are distributed to shareholders. Currently, in order for a shareholder to propose a nominee, they must initiate a proxy contest and distribute their own proxy material.

The proposed rule amendments will allow inclusion of certain shareholder nominees in the corporate and mutual fund proxy material that is distributed to all eligible voting shareholders, unless the shareholders are otherwise prohibited either by applicable state law, or a company's charter/bylaws.

The following chart outlines which shareholders are eligible to submit a nominee:

Company Size (filer)	Registered Investment Company Size (net assets)	Ownership (voting securities)
Large accelerated	\$700 million (mm) or more	1%
Accelerated	Between \$75mm and \$700mm	3%
Non-accelerated	Less than \$75 mm	5%

**Definitions:**  
**Large accelerated filer-** co. with a world-wide market value of \$700mm or more.  
**Accelerated filer-** co. with a world-wide market value of \$75mm or more but less than \$700mm.  
**Non-accelerated filer-** co. with a world-wide market value of less than \$75mm.

Under the proposed rule amendments there are additional requirements for the nominating shareholder(s) as follows:

- Shareholders will be able to aggregate accounts to meet applicable thresholds.
- Shareholders would be required to have held their shares for at least one year.
- Shareholders would be required to sign a statement declaring their intent to continue to own their shares through the annual meeting at which directors are elected.
- Shareholders would be required to certify that they are not holding their stock for the purpose of changing control of the company or fund, or to gain more than a minority representation on the board of directors.
- Qualifying shareholders will have the right to nominate no more than one nominee for director, or a number that represents no more than 25 percent of the company's board of directors, whichever is greater.

If the proposal passes, also included will be amendments to the so-called "election exclusion," Exchange Act Rule 14a-8(i)(8). This refers to shareholder proposals that amend, or request an amendment to a corporate/mutual funds nomination procedures, or other director nomination related provisions that can be found in the company's governing documents. Currently, the proxy issuer has the discretion to include or omit such proposals. The amendment would narrow the election exclusion, and allow qualifying shareholders (see below), to submit proposals that relate to an election.

The eligibility provisions of Rule 14a-8 will remain unchanged, and continue to apply. Under these provisions in order to be considered a qualifying shareholder, a shareholder must have continuously held at least \$2,000 in market value (or 1 percent, whichever is less) of the issuer's securities entitled to be voted on the proposal at the meeting, for a period of one year prior to submitting the proposal.

*News update continued on reverse side.*