United States

Taft-Hartley Proxy Voting Guideline Updates

2015 Policy Recommendations

Updated March 9, 2015

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DIRECTOR ELECTIONS

Voting on Director Nominees in Uncontested Elections

Unilateral Bylaw/Charter Amendments

Current Recommendation: Unilateral bylaw/charter amendments are currently evaluated under the "Governance Failures Policy": Vote against or withhold from the entire board of directors, (except new nominees, who should be considered on a case-by-case basis) due to:

- The presence of problematic governance practices including interlocking directorships, multiple related-party transactions, excessive risk-taking, imprudent use of corporate assets, etc.;
- Inadequate CEO succession planning, including the absence of an emergency and non-emergency/orderly CEO succession plan;
- Material failures of governance, stewardship, risk oversight[1], or fiduciary responsibilities at the company, failure to replace management as appropriate, flagrant or egregious actions related to the director(s)' service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company; or
- Chapter 7 bankruptcy, Securities & Exchange Commission (SEC) violations or fines, and criminal investigations by the Department of Justice (DOJ), Government Accounting Office (GAO) or any other federal agency.

Key Changes:

Adopt a stand-alone policy that codifies the current policy application related to unilateral bylaw/charter amendments under the "Governance Failures" policy.

New Recommendation: *Unilateral Bylaw/Charter Amendments*

Generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, who should be considered case-by-case) if the board amends the company's bylaws or charter without shareholder approval in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors, as applicable:

- The board's rationale for adopting the bylaw/charter amendment without shareholder ratification;
- Disclosure by the company of any significant engagement with shareholders regarding the amendment;
- The level of impairment of shareholders' rights caused by the board's unilateral amendment to the bylaws/charter;
- The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions;
- The company's ownership structure;
- The company's existing governance provisions;
- Whether the amendment was made prior to or in connection with the company's initial public offering;
- The timing of the board's amendment to the bylaws/charter in connection with a significant business development;

[1] Examples of failure of risk oversight include, but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; significant adverse legal judgments or settlements; hedging of company stock; or significant pledging of company stock.

› Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders.

Rationale for Update:

There has recently been a substantial increase in the number of bylaw/charter amendments made by boards that adversely impact shareholder rights without seeking shareholder ratification of the amendments. Given this rise in unilateral amendments, Taft-Hartley Advisory Services has adopted a policy within its Board Accountability policy framework that specifically addresses this issue. Cases of unilateral bylaw/charter amendments were previously evaluated under the Material Governance Failures policy. The policy codifies our current approach to unilateral bylaw/charter amendments.

Accounting for a portion of the increase in unilateral amendments is a recent trend of companies adopting a suite of shareholder-unfriendly governance provisions shortly before, or on the date of, their initial public offerings ("IPOs"). Further, while many investors may not consider pre-IPO adoptions of shareholder-unfriendly provisions to be best governance practice and hold directors accountable for such actions, some may consider these adoptions on a case-by-case basis. The new policy addresses this trend in IPO-related amendments by considering it a factor when determining a vote recommendation on directors.

Other Board-Related Proposals

Shareholder Access to the Proxy

Current Recommendation: Vote case-by-case on proposals to provide shareholders the ability to nominate director candidates to be included on management's proxy card, taking into account, among other factors:Vote case-by-case on proposals to enact proxy access, taking into account, among other factors:

- Company-specific factors including:
  - Responsiveness to shareholders (e.g. failing to implement majority-supported shareholder proposals);
  - Board and key committee independence;
  - Problematic governance and compensation practices; and
  - Past accounting or financial issues such as restatements.
- Proposal-specific factors, including:
  - The ownership thresholds proposed in the resolution (i.e., percentage and duration);
  - The maximum proportion of directors that shareholders may nominate each year; and
  - The method of determining which nominations should appear on the ballot if multiple shareholders submit nominations.

New Recommendation: Generally vote for management and shareholder proposals for proxy access with the following provisions:

- **Ownership threshold:** maximum requirement not more than three percent (3%) of the voting power;
- **Ownership duration:** maximum requirement not longer than three (3) years of continuous ownership for each member of the nominating group;
- **Aggregation:** minimal or no limits on the number of shareholders permitted to form a nominating group;
- **Cap:** cap on nominees of generally twenty-five percent (25%) of the board.

Review for reasonableness any other restrictions on the right of proxy access.

Generally vote against proposals that are more restrictive than these guidelines.

Rationale for Update:

Vested with clear legal authority by the Dodd-Frank Act, the SEC adopted a proxy access rule (Rule 14a-11) in August 2010 that provided a thoughtful balance of a number of factors including the ownership threshold and the holding period duration. The DC Circuit Court vacated the rule in July 2011 based on its findings of procedural deficiencies in the SEC's rulemaking process. Prior policy, updated for the 2012 proxy season, largely focused on attempts by shareholder proposal proponents to lower the safeguards against abuse (for example, an extremely low ownership threshold) of the access right that the SEC's formulation addressed. As such, the policy sought to maintain the balance that the SEC struck between protecting shareholders' rights and the potential abuse of the access process. Three years of voting results on both management- and shareholder-sponsored proxy access proposals drawing on the Commission's model appear to validate the SEC's formulation. Moreover, a 2014 CFA Institute study provides a cost-benefit analysis, which the court said was lacking in the SEC's rulemaking process, and concludes that "proxy access would serve as a useful tool for shareowners in the United States and would ultimately benefit both the markets and corporate boardrooms, with little cost or disruption to companies and the markets as a whole."

For companies that present both a board and shareholder proxy access proposals on the ballot, Taft-Hartley Advisory Services will review each of them under the policy.

SHAREHOLDER RIGHTS & DEFENSES

Fee-Shifting Bylaw Provisions

Current Recommendation: None on fee-shifting bylaws. For Exclusive Venue:

Generally vote against management proposals to restrict the venue for shareholder claims by adopting charter or bylaw provisions that seek to establish an exclusive judicial forum.

Key Changes: Adopt a policy on bylaws which mandate fee-shifting or arbitration, which have a material impact on shareholders' litigation rights.

New Recommendation:

Generally vote against bylaws that mandate fee-shifting whenever plaintiffs are not completely successful on the merits (i.e., in cases where the plaintiffs are partially successful).

Unilateral adoption by the board of bylaw provisions which affect shareholders' litigation rights will be evaluated under Taft-Hartley Advisory Services' policy on Unilateral Bylaw/Charter Amendments.

Rationale for Update:

Beginning in 2011, companies began to adopt bylaw provisions intended to limit the venue for shareholder lawsuits to the jurisdiction of incorporation. More recently, companies and their advisers have proposed other types of bylaws intended to limit shareholders' litigation rights. Most notably, a May 2014 Delaware Supreme Court decision opened the door to the adoption by companies of bylaws that would require a shareholder plaintiff who sues the company unsuccessfully to pay the defendant company's litigation expenses. Although the Delaware legislature was widely expected to enact legislation limiting the applicability of the Supreme Court's decision to non-stock corporations, the legislature has not yet done so, and several publicly traded Delaware corporations have already adopted fee-shifting bylaws by way of a board resolution. Should the legislature decline to prohibit such actions by public companies, a large number of companies are expected to adopt such bylaws in 2015 and beyond, either through unilateral board action or by putting such provisions to a shareholder vote.

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