US Policy – Restrictions on Binding Shareholder Proposals

Background and Overview

Shareholders' ability to amend the bylaws is considered a fundamental right. Under SEC Rule 14a-8, shareholders who have held shares valuing at least $2,000 for one year are permitted to submit shareholder proposals, both precatory and binding, to amend bylaws. However, some states allow for companies to restrict this right in their charters.

Over the last several years, shareholders have launched several campaigns at companies that do not provide this right and have specifically submitted precatory proposals on this issue. These campaigns have often been contentious and have generated interest in the wider investor community on prohibitions of binding shareholder proposals. Some companies have offered management proposals as alternatives, that would have required higher holding levels or time periods for shareholders to submit a binding proposal to amend the bylaws, but these often have not been approved.

Key Changes Under Consideration

Vote against or withhold from members of the governance committee if: The company's charter or articles of incorporation impose undue restrictions on shareholders' ability to amend the bylaws. Such restrictions include, but are not limited to: outright prohibition on the submission of binding shareholder proposals, or share ownership requirements or time holding requirements in excess of SEC Rule 14a-8. Vote against on an ongoing basis.

Intent and Impact

Some shareholder campaigns in this area have been effective in shining a light on an issue often not readily visible to the wider market. Shareholders' ability to amend the bylaws is considered a fundamental right and ISS is therefore proposing a new policy item to address this problematic practice.

Request for Comment

- Is the vote recommendation to withhold from members of the governance committee on an on-going basis sufficient?

- Going forward, how would you consider boards should address this issue? For example, would the introduction by a company of a super-majority vote requirement to approve binding shareholder proposals in place of a previous prohibition be viewed as sufficiently responsive?