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Contact:
Rosemary Lally
Editor
202.261.7083
rosemary@cii.org

CII Report on Proxy Access Bylaws at U.S. Companies Finds Consensus on Key Provisions

Washington, D.C., Feb. 2, 2017 — The Council of Institutional Investors (CII) today published a report on proxy access bylaw provisions adopted by 347 U.S. public companies. The report shows that a high percentage of the bylaws incorporate similar key provisions. The report analyzes data collected by the law firm of Covington & Burling on access bylaws adopted by 2016.

Proxy access was the hottest issue of the 2016 proxy season and is expected to make further gains this year. It is a mechanism that lets shareowners place their nominees for director in a company's proxy materials. This enables the owners of a company to avoid the cost of waging a separate proxy contest when they are dissatisfied with the performance of a corporate board and want to run their own candidates for election.

Among the report's findings:

- Nearly all access bylaws follow the "3 and 3" approach favored by institutional investors, under which a shareholder or group of shareholders seeking to nominate a director via proxy access must own at least 3 percent of outstanding shares for at least three years.

- 87 percent of access bylaws permit no more than 20 shareholders to aggregate their holdings to meet the ownership requirement necessary to nominate a board candidate.

- 89 percent of access bylaws let companies omit an access candidate if the nominating shareholder(s) is waging a proxy contest with another candidate on the dissident card.

- 63 percent of proxy access bylaws cap the number of directors that shareholders can nominate at the greater of two candidates or 20 percent of the board.

CII's position on many of the provisions discussed in the report is outlined in our 2015 guide, Proxy Access: Best Practices. The report also uncovered provisions that could thwart use of access. CII plans to consider such onerous provisions in a follow-up guide later this year.

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