



California Corporate & Securities Law

Meeting Over? Hold On To That Voting Record!

By Keith Paul Bishop on December 28, 2011

In 1988, California enacted a statute to provide a means for beneficial owners of stock to obtain information about the voting of their shares from the persons with the power to vote those shares. Cal. Stats. 1988, ch. 1360. Unfortunately, the statute is no clearer than the waters of Loch Ness.

In general, the statute requires that “every person possessing the power to vote shares of stock on behalf of another” to maintain a record of the manner in which the shares were voted. Cal. Corp. Code § 711(d). Upon “a reasonable written request”, that person is required to disclose the “voting record”. Cal. Corp. Code § 711(e). While that seems reasonably intelligible, there are more than a few problems with the statute.

The legislature failed to define “person possessing the power to vote the shares of stock on behalf of another”. Interestingly, the legislature did define, albeit incompletely, “a person on whose behalf shares are voted”. The definition of this latter phrase is incomplete. While the legislature identifies two specific types of owners that are covered by the phrase, it expressly states that the phrase *includes, but is not limited to*, those specified types of owners. Cal. Corp. Code § 711(b). Thus, the legislature has left the definition completely open-ended, a problem that is further compounded by the fact that the legislature mandated that the statute be “liberally construed”. Cal. Corp. Code § 711(a). Some, however, may be able to find refuge in three types of persons that are excluded from the statute. Cal. Corp. Code § 711(c).

Another problem with the statute is that it provides no geographic boundaries. The legislative findings imply that the statute is applicable to both domestic and foreign corporations. Cal. Corp. Code § 711(a). However, the jurisdiction of incorporation of the issuer of the shares would seem to be irrelevant to the stated purpose of the statute which seems to relate to “residents of this state”. Furthermore, the statute imposes the obligation on the “person possessing the power to vote the shares on behalf of another” – not the issuer. However, the legislature did not limit the statute to such persons located in California nor did the legislature limit the right to obtain the voting record to California residents.

Another problem is that the statute requires that a request be “reasonable” but the legislature failed to give any guidance on what might or might not be reasonable, or even to whom the request must be

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reasonable. In contrast, California's shareholder inspection statute, Section 1601, at least provides some point of reference by requiring that the inspection be "for a purpose reasonably related to such holder's interests as a shareholder".

Those subject to the statute (whoever and wherever they might be) who willfully fail to comply (however that might occur) face an award of costs and reasonable attorneys' fees. Cal. Corp. Code § 711(j).

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