



California Corporate & Securities Law

Foreign Corporations Are Subject To California's Statutes Requiring Disclosure of Voting Results

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In 2009, the Securities and Exchange Commission amended Form 8-K to require reporting companies to report shareholder voting results within four business days. How do shareholders in private companies get access to this information?

While it seems likely to me that most states would allow shareholders to obtain this information pursuant to general common law or statutory inspection rights, California statutorily requires corporations to provide this information.

California's Requirement

For a period of 60 days following a shareholders' meeting, a corporation must upon the written request of a shareholder "forthwith" inform the shareholder of the result of any particular vote. Cal. Corp. Code § 1509. This requirement applies to both annual and special meetings. The corporation must disclose:

- The number of shares voting for,
- The number of shares voting against, and
- The number of shares abstaining or withheld from voting.

In the case of election of directors, the corporation is required to report the number of shares (or votes in the case of cumulative voting) cast for each nominee.

Foreign Corporations

Foreign corporations (*i.e.*, corporations not organized under the California General Corporation Law) that are qualified to transact intrastate business in California are required to provide this information at the request of a shareholder resident in California. Cal. Corp. Code § 1510(a). According to the California Secretary of California, there are more than 80,000 foreign corporations qualified to transact business in California. In addition to natural persons residing in California, a shareholder will be considered resident in California if it is a state bank, national bank headquartered in California or any retirement fund for public employees established or authorized by California law. Cal. Corp. Code § 1510(b). Even if the foreign corporation is not qualified to transact business in California, it can be subject to the disclosure requirement if it has one or more subsidiaries that are domestic corporations or foreign

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corporations qualified to transact intrastate business in California. Finally, California has expansive provisions for determining who is a shareholder for purposes of this requirement. Cal. Corp. Code § 1512.

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