



Alerts

SEC Proxy Access Proposals Are Effective

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Corporate / Financial Institutions Alert

On November 15, 2010, the U.S. Securities and Exchange Commission (SEC) adopted a variety of rules relating to shareholder proxy access which would

- allow shareholders to include nominations and supporting statements in a company's proxy materials (Rule 14a-11); and
- permit shareholders to propose on a company-by-company basis a system of proxy access and provide guidance to companies that implement such systems (the Rule 14a-8 amendments).

The U.S. Chamber of Commerce and the Business Roundtable filed a petition with the U.S. Circuit Court of Appeals for the District of Columbia Circuit seeking review of Rule 14a-11 on September 29, 2010. On October 4, 2010, the SEC agreed to stay the effectiveness of Rule 14a-11 and the Rule 14a-8 amendments.

The D.C. Circuit invalidated Rule 14a-11 on July 22, 2011, and on September 7, 2011, the SEC announced that it would not seek a rehearing or appeal the decision to the U.S. Supreme Court.

The stay imposed on the effectiveness of the Rule 14a-8 amendments expired when the D.C. Circuit's judgment became final on September 14, 2011. On September 20, 2011, the SEC published a notice in the Federal Register announcing the effectiveness of those amendments.

Previously, Rule 14a(i)(8) allowed public companies to exclude any shareholder proposal that "relates to a nomination or an election for membership on the company's board of directors . . . or a procedure of such nomination or election."

The Rule 14a-8 amendments now require public companies to include in their proxy materials shareholder proposals seeking to amend the company's governance documents to establish a process whereby a shareholder's director nominees (and information related thereto) can be included in the company's proxy materials. They also provide guidance to a public company on how to handle its proxy statement matters if a company adopts such procedures or is required to implement them by state law. These rules will be effective for public companies for the 2012 proxy season.

In addition, new Rule 14a-8(i)(8) allows a company to exclude a shareholder proposal if it:

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- Would disqualify a nominee who is standing for election;
- Would remove a director from office before his or her term expired;
- Questions the competence, business judgment or character of one or more nominees or directors;
- Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- Otherwise could affect the outcome of the upcoming election of directors.

While the amended shareholder proxy access proposals would still be subject to the standard Rule 14a-8 eligibility requirements, these requirements can be easily met. They generally require only that shareholder proponents have owned for more than one year at least \$2,000 in company stock.

The other 14a-8 amendments set forth rules that have to be followed if a company adopts shareholder proposed governance provisions relating to the inclusion of shareholder director nominees in a company's proxy materials or if a company is required to adopt such procedures by state law. For example, new Rule 14a-18 requires the nominating shareholder to notify the company of its intent to do so on a new Schedule 14N and file that notice, including the required disclosure, with the SEC on the date it is sent to the company.

For further information, please contact [Timothy M. Sullivan](#) or your regular [Hinshaw attorney](#).

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