

SEC STAYS EFFECTIVENESS OF NEW PROXY ACCESS RULES

On October 4, 2010, the Securities and Exchange Commission issued an order to stay the effectiveness of recent changes to the federal proxy rules, including new Rule 14a-11, the amendment to Rule 14a-8 and other related amendments.

As adopted on August 25, 2010, new Rule 14a-11—the so-called “proxy access” rule—grants large shareholders the right to nominate directors and have these nominees included in the company’s proxy statement in certain circumstances. The amendment to Rule 14a-8 allows investors to file bylaw proposals that seek more permissive access procedures. For background about the new proxy access rules, please read our prior Alert titled [SEC Adopts Proxy Access Rules](#) on our website.

The SEC’s order comes just five days after the Business Roundtable and the Chamber of Commerce of the United States of America filed a petition with the United States Court of Appeals for the District of Columbia Circuit challenging recent changes to the federal proxy rules. The Roundtable and the Chamber had requested that the SEC stay the effectiveness of the new rules until the court has a chance to review their petition. In its order issued yesterday, the SEC agreed to stay the effectiveness of the new rules and indicated it would join the two groups in requesting expedited review of their challenge.

Without addressing the merits of the petitioners’ challenge, the SEC stated that “a stay avoids potentially unnecessary costs, regulatory uncertainty, and disruption that could occur if the rules were to become effective during the pendency of a challenge to their validity.” Although the petitioners had not sought a stay of the amendment to Rule 14a-8, which the SEC adopted at the



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same time as Rule 14a-11, the SEC stayed the effectiveness of that amendment, as well, “because the amendment to Rule 14a-8 was designed to complement Rule 14a-11 and is intertwined, and there is a potential for confusion if the amendment to Rule 14a-8 were to become effective while Rule 14a-11 is stayed.”

The effective date of the new changes to the federal proxy rules was originally scheduled for November 15, 2010, and would have applied to companies that mailed their proxy statement for their last annual meeting no earlier than March 15, 2010. After yesterday’s order, however, it appears unlikely that the new changes will take effect for the 2011 proxy season.

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