

January 20, 2010

Supplemental Comments Submitted on the SEC's Proxy Access Proposals

We participated with six other major law firms in drafting and submitting a supplemental comment letter on proxy access in response to the SEC's request on December 14th for additional comments (available on the SEC website at <http://www.sec.gov/comments/s7-10-09/s71009-619.pdf>).

We continue to believe, as stated in the joint letter, that the preferred approach to proxy access is that the SEC adopt only the proposed amendment to Rule 14a-8 that would allow shareholders to submit and vote upon proxy access proposals. Our joint letter elaborated on our earlier recommendation that, if the SEC adopts its proxy access regime, shareholders should have the opportunity to modify or opt-out entirely to facilitate private ordering. As proposed by the SEC last June, companies could modify proxy access to adopt less restrictive provisions, but would be precluded from adopting more restrictive provisions. As stated in our letter, the SEC's approach to proxy access "suggests faith in the ability of shareholders to use proxy access to identify and elect better qualified directors while at the same time having a lack of faith in the ability of shareholders to determine the scope of proxy access necessary to best serve their interests."

Our joint letter also recommended that the SEC defer the effective date of proxy access until 2012 in order to allow shareholders the opportunity at the 2011 annual meeting to consider opting out or tailoring proxy access to their company's individual circumstances, or alternatively to include the ability for a board-approved opt-out (without a requirement for shareholder approval) solely for the 2011 transition year.

The SEC is expected to consider adoption of proxy access in the next two months.

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