

October 4, 2010

SEC Stays Proxy Access - For Now

In response to a [motion](#) by the Business Roundtable and the U.S. Chamber of Commerce to the SEC to stay the effectiveness of the recently adopted proxy access rules pending resolution of a petition simultaneously filed by them with the U.S. Court of Appeals for the D.C. Circuit seeking invalidation of the new rules, the SEC has exercised its discretion to [stay](#) Rule 14a-11 and the related amendments to Rule 14a-8 pending resolution of the petition by the Court.

In their motion and petition, the Business Roundtable and the Chamber of Commerce assert that the new proxy access rules are arbitrary, capricious and not in accordance with law, do not promote efficiency, competition and capital formation, exceed the SEC's authority and are unconstitutional. The SEC's stay does not address the merits of those claims.

The impact of this unexpected development on the 2011 proxy season is at present unclear, particularly in light of the unknown amount of time litigation of the petition in the D.C. Circuit Court may involve. The new proxy rules were due to become effective on November 15, 2010, and to apply to the upcoming proxy season for companies that mailed their 2010 proxy statements on or after March 15, 2010. An SEC spokesman has said that it is the SEC's expectation that the legal issues raised will be resolved by late spring, which would effectively delay implementation of proxy access for at least one year for most companies.

We recommend that companies continue working to determine the best way to implement proxy access, but wait until the situation is clarified before finalizing by-law revisions and other changes to implement proxy access.

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