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[SEC Stays New Proxy Access Rules](#)

On October 4, 2010, the Securities and Exchange Commission exercised its discretion to grant a stay of its controversial new proxy access rules and related amendments that were scheduled to take effect on November 15, 2010. As we previously blogged (see our posts [here](#) and [here](#)), the SEC's disputed proxy access rules would grant shareholders who have held three percent (3%) of the outstanding stock of a company for at least three (3) years the right to include a limited number of director nominees in the company's proxy statement. For many companies, the stay could effectively delay implementation of the new proxy access rules for the upcoming 2011 proxy season. The order granting the stay can be found [here](#).

Background

As we previously blogged (see blog post [here](#)), on September 29, 2010, Business Roundtable and the Chamber of Commerce of the United States filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia Circuit challenging the legality of the SEC's new proxy access rules. In connection with the Petition for Review, Business Roundtable and the U.S. Chamber of Commerce filed with the SEC a motion to stay the effect of newly adopted Rule 14a-11 and associated amendments pending such review.

The Stay

Without addressing the merits of the challenge to the new proxy access rules by Business Roundtable and the U.S. Chamber of Commerce, the SEC exercised its discretion to stay Rule 14a-11 and related amendments to the SEC's rules, including the amendment to Rule 14a-8, pending resolution of the petition filed in the Court of Appeals. In granting the stay, the SEC found that a stay of Rule 14a-11 and related rule amendments 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.

What should you do now?

The new proxy access rules were to go in effect on November 15, 2010, and were to apply to the upcoming proxy season for companies other than smaller reporting companies that mailed their 2010 proxy statements on or after March 15, 2010. According to published reports, an SEC spokesman commented that the SEC

expects the litigation to be resolved by next spring. As a result, implementation of the new proxy access rules subject of the dispute may be delayed until the 2012 proxy season for many companies. Given the uncertainty as to when the rules will take effect and whether they will be implemented in their present form, companies should consider holding off on implementing governance changes specifically related to proxy access for the time being.

What if you have questions?

For any questions or more information on these or any related matters, please contact any attorney in the firm's corporate and securities practice group.

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