



# California Corporate & Securities Law

## Proxy Access and Majority Voting

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According to [TheCorporateCounsel.net](#) yesterday, the Security and Exchange Commission's proxy access rules were published yesterday in the Federal Register – thereby starting the clock on the effectiveness of the rules.

In complying with proxy access, California companies should think about the interplay between Corporations Code § 708.5 and proxy access. Section 708.5 was added to the Code a few years ago at the behest of the California Public Employees Retirement System (CalPERS) and the State Teachers Retirement System (CalSTRS). The statute allows a listed corporation that has eliminated cumulative voting to amend either its articles or bylaws to provide that in an uncontested election, “approval of the shareholders” (defined in Cal. Corp. Code § 153) is required to elect a director. An “uncontested election” is defined as an election in which the number of candidates does not exceed the number of directors to be elected (note that statute makes specific provision for when this determination is to be made).

Proxy access may result in fewer “uncontested elections” and thus have the likely unintended consequence of vitiating majority vote requirements for the election of directors.

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