

Corporate & Financial Weekly Digest

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SEC Adopts Shareholder Access Rules

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On August 25, the Securities and Exchange Commission adopted final rules, effective 60 days following publication in the *Federal Register*, permitting shareholders or groups of shareholders to access the proxy statements of public companies for the purpose of nominating directors.

Under new Rule 14a-11, the holder or holders of 3% or more of the shares of the company entitled to vote on the election of directors, who continuously owned such shares for at least three years, will be permitted to nominate, and have included in the company's proxy statement, the greater of one nominee or nominees representing 25% of the company's board of directors.

The Rule requires that the nominating shareholder(s) file with the company and the SEC a new Schedule 14N in which the nominating shareholder(s) must make several representations and disclosures regarding its background and intentions and provide detailed information with respect to its nominees. There also are provisions permitting the company to challenge the qualifications under the Rule of either the nominating shareholder(s) or its nominees.

In addition, the SEC has amended Rule 14a-8(i)(8) to require companies to include in company proxy materials shareholder proposals that would amend, or request an amendment of, the company's governing documents regarding nominating procedures related to shareholder nominations, provided that those proposals may not conflict with new Rule 14a-11. Permitted amendments would be those that, for example, seek to reduce the minimum ownership or holding requirements provided under Rule 14a-11 or otherwise lessen its requirements for nominating shareholders.

Smaller reporting companies (filers which have a public equity float of \$75 million or less) are not subject to Rule 14a-11 until three years following its effective date.

Click [here](#) to read a Katten *Client Advisory* providing a more detailed analysis of the new rules. Click [here](#) to access the SEC's final Rule.