

July 22, 2011

D.C. Circuit Invalidates SEC's Proxy Access Rules

Earlier today, in *Business Roundtable v. Securities & Exchange Commission*, No. 10-1305 (D.C. Cir. July 22, 2011), the United States Court of Appeals for the District of Columbia Circuit issued its decision invalidating the SEC's proxy access rules adopted in August 2010 with the intention that they be effective for the 2011 proxy season (see our blog [here](#)). The Business Roundtable and U.S. Chamber of Commerce filed the lawsuit in September 2010 challenging the SEC's adoption of proxy access rules and separately requesting for the SEC to stay implementation of the rules pending the outcome of the lawsuit. The SEC granted the request for stay in October 2010 and issuers were relieved of the burdens of proxy access for the 2011 proxy season. (See our blog posts [here](#) and [here](#).)

The Court found that the Commission "neglected its statutory responsibility to determine the likely economic consequences of Rule 14a-11 and to connect those consequences to efficiency, competition, and capital formation." The Court also criticized the SEC's reliance on empirical data that purported to demonstrate that proxy access would improve board performance and increase shareholder value by facilitating the election of dissident nominees, pointing out numerous studies submitted in the rule comment process that reached the opposite result.

The SEC's proxy access rules also included an amendment to Rule 14a-8 that would authorize stockholder proposals to establish a procedure for stockholders

to nominate directors. The SEC stayed implementation of the changes to Rule 14a-8 at the same time it stayed implementation of Rule 14a-11; however, the changes to Rule 14a-8 were not affected by the Court's decision.

The SEC will now need to decide whether to propose new regulations for proxy access and whether to permit Rule 14a-8 to go effective. However the SEC decides to proceed, it seems unlikely that public companies will face mandatory proxy access for the 2012 proxy season.

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 practice group. A list of such attorneys can be found by clicking "[Lawyers](#)" on this page.

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