



# California Corporate & Securities Law

## D.C. Circuit Delivers Harsh Judgment On SEC Rule 14a-11

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Today, the United States District Court of Appeals issued its opinion in the challenge to Rule 14a-11 by the Business Roundtable and Chamber of Commerce. The Court of Appeals vacated the rule finding that the Securities and Exchange Commission acted “arbitrarily and capriciously for having failed to assess adequately the economic effects of the rule.” Pointedly, the Court noted that the SEC had previously been found to have acted arbitrarily and capriciously in *American Equity Investment Life Insurance Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010) and *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005). In a harsh assessment of the SEC’s rulemaking with respect to Rule 14a-11, the Court found:

*[T]he Commission inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters. For these and other reasons, its decision to apply the rule to investment companies was also arbitrary.*

You can read the opinion by Judge [Douglas H. Ginsburg here](#)

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