

LEGAL UPDATES

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## Service

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# SEC Abandons Proxy Access Rules (for now), But Amended Rule 14a-8 Will Go Into Effect Soon

The Securities and Exchange Commission (SEC) confirmed publicly that it will not seek a rehearing or further review of the D.C. Circuit Court of Appeal's decision to vacate the proxy access rules adopted by the SEC last year. In a press release announcing that decision, Chairman Mary Schapiro reiterated her commitment to "finding a way to make it easier for shareholders to nominate candidates for corporate boards," and indicated that she has asked SEC staff to continue reviewing the court's decision to learn from the objections as the SEC considers how best to move forward.

In the meantime, the amendments to Rule 14a-8 will automatically go into effect without further action when the court's decision is finalized, anticipated to be early next week. As discussed in our client alert about the new rules last year, amended Rule 14a-8 will require companies to include shareholder proposals that seek to establish director nomination procedures in the company's governing documents as long as the proposals do not conflict with or limit applicable provisions of state, federal or foreign law. For example, if a company's charter or bylaws prohibit shareholder nomination rights, shareholders who wish to amend the provision may submit a shareholder proposal and the company cannot exclude the proposal under Rule 14a-8.

The amendments do not alter the existing eligibility requirements for shareholder proposals under Rule 14a-8, namely that the proponent must own stock equal to \$2,000 in market value (or 1 percent, if less) for at least one year prior to submitting the proposal.

## What This Means to You

While we expect that some companies will take proactive steps to amend their governing documents to provide their own standards for proxy access rather than reacting to a shareholder proposal, we expect that most companies will review the development of market and shareholder practices in this area before making affirmative changes. Nonetheless, companies should immediately consider how they would respond to a shareholder proposal to change director nomination procedures.

### **Contact Info**

If you have any questions about these recent developments or any other SEC compliance matters, please contact your Husch Blackwell attorney.

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