



SEC AGREES TO DELAY IMPLEMENTATION OF PROXY ACCESS BEYOND 2011 PROXY SEASON

On October 4, 2010, the SEC issued an [order](#) to stay implementation of its recently-enacted proxy access rules in response to a legal challenge to their validity. As originally enacted, these proxy access rules would have become effective during the 2011 proxy season for most public companies. As a result of the stay, it is unlikely that public companies will be subject to these proxy access rules during the traditional 2011 proxy season.

The SEC issued the stay in response to a [petition](#) filed in a federal appeals court last week by the Business Roundtable and the U.S. Chamber of Commerce. The petition challenges the validity of Rule 14a-11 and associated amendments to other SEC rules on various administrative, statutory, and constitutional grounds. Rule 14a-11 requires public companies to permit any shareholder or group of shareholders owning at least 3% of the public company's voting stock for at least three years to include director nominees in the company's proxy materials.

The SEC's stay also covers the accompanying revisions to Rule 14a-8, as the SEC considers those changes to be "intertwined" with new Rule 14a-11. Those revisions to Rule 14a-8 are intended to prevent a company from excluding from its proxy materials shareholder proposals that seek to establish proxy access procedures in the company's governing documents, provided that these proposals do not conflict with or limit Rule 14a-11. Our previous summary of these rules and the accompanying SEC adopting release is available [here](#).

The stay will remain in effect until the resolution of the petition. According to the SEC's stay order, the parties have agreed to jointly seek expedited review of the petition.

— [Hope M. Spencer](#) and [Kelly C. Simoneaux](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Curtis R. Hearn

Jones Walker
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8308 *tel*
504.589.8308 *fax*
chearn@joneswalker.com

Corporate & Securities Attorneys

Lynn M. Barrett
Allison C. Bell
Robert B. Bieck, Jr.
William R. Bishop
John C. Blackman, IV
Adam G. Brimer
Christopher M. Capitelli
Robert L. Carothers, Jr.
Robert R. Casey
Monique A. Cenac
Scott D. Chenevert
Alexandra L. Clark
Christopher P. Couch
Edward B. Crosland
Tracy P. Curtis

Mollye M. Demosthenidy
Allen E. Frederic, III
Asher J. Friend
John W. Gant, Jr.
Kristin S. Gardner
Neely Sharp Griffith
Carl C. Hanemann
Curtis R. Hearn
Adelaida M. Hernandez
William H. Hines
Karen B. Johns
Sanford B. Kaynor, Jr.
Charles W. Lane, III
Andrew R. Lee
George A. LeMaistre, Jr.

Nathan R. List
Margaret F. Murphy
Katharine F. Musso
Kenneth J. Najder
Jessica F. Natali
Hugh C. Nickson, III
H. Gary Pannell
R. Joseph Parkey, Jr.
Jeffrey T. Powell
Jerry W. Powell
Rudolph R. Ramelli
James Rebarchak
Charles E. Reeves, Jr.
Myla R. Reizen
Peter J. Rivas

Dionne M. Rousseau
Amy G. Scafidel
Britton H. Seal
Jack H. Shannon
Kelly C. Simoneaux
Ronald A. Snider
Hope M. Spencer
R. Troy Van Orman
Michael D. Waters
V. Walker Wells
Michael A. White
Richard P. Wolfe
Paul O. Woodall, Jr.

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