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Proxy Access to Proceed Through Shareholder Proposals

September 7, 2011

In a **statement** issued today, the Securities and Exchange Commission cleared the way for the effectiveness of its Exchange Act Rule 14a-8 amendments requiring companies to include in their proxy materials shareholder proposals relating to “proxy access.” As a result of the Commission’s determination not to appeal or seek a rehearing of the decision by the U.S. Court of Appeals to vacate the proxy access rule, Rule 14a-11, the Commission’s stay of the effectiveness of its amendments to Rule 14a-8 will be lifted and companies can expect to receive proxy access shareholder proposals for the 2012 proxy season.

The Commission **adopted** Rule 14a-11 and amendments to Rule 14a-8 on August 25, 2010. On October 4, 2010, the Commission **stayed** the effectiveness of both Rule 14a-11 and the Rule 14a-8 amendments pending the resolution of a challenge to Rule 14a-11 by the Business Roundtable and the Chamber of Commerce of the United States of America. On July 22, 2011, the U.S. Court of Appeals **vacated** Rule 14a-11. The stay of the effective date of the amendments to Rule 14a-8 will expire without further Commission action when the court’s decision is finalized. As the Commission has determined not to challenge the decision, the stay is expected to be lifted on September 13, 2011.

Under amended Rule 14a-8(i)(8), a shareholder will be able to propose changes to a company’s governing documents regarding the process by which shareholders nominate directors and when those shareholder nominees must be included in the company’s proxy materials. This amendment to Rule 14a-8(i)(8) will trigger a “private ordering” process

whereby the determination as to whether and how a particular company is required to include shareholder nominees in its proxy materials will be determined by shareholder or management proposals that are voted on by that company's shareholders. Upon the effectiveness of the Rule 14a-8(i) (8) amendments, companies may begin receiving such proxy access shareholder proposals for the 2012 proxy season and companies should begin preparing for that possibility now.

In determining the appropriate response to a proxy access shareholder proposal, companies will have a range of options. These options include presenting the proposal in the company's proxy materials for a vote of the shareholders or taking actions that allow for the exclusion of the proposal from the company's proxy materials -- for example, through the adoption of a proxy access process or submission of a management-proposed proxy access proposal for a vote of the shareholders. The approach to a proxy access shareholder proposal will be unique to each company, as that approach will depend upon the specific terms of the shareholder proposal, the company's corporate governance structures and the nature of the company's share ownership.

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