

September 9, 2011

Alert

SEC Disclosure and Corporate Governance

Proxy Access Update: SEC Decides Not to Appeal But Companies May Receive Shareholder Proposals for 2012 Proxy Season

On September 6, 2011, the U.S. Securities and Exchange Commission announced that it will not seek rehearing of, or appeal to the Supreme Court, the decision of a panel of the U.S. Court of Appeals for the District of Columbia invalidating Rule 14a-11 under the Securities Exchange Act of 1934, as amended. A copy of Chairman Schapiro's Statement is available at <http://www.sec.gov/news/press/2011/2011-179.htm>. Rule 14a-11 would have required companies to include in their proxy materials, at their own expense, director candidates nominated by shareholders under specified conditions.

The Commission's voluntary stay of a companion amendment to Rule 14a-8, imposed last fall, will expire without further Commission action when the D.C. Circuit panel decision becomes final, which is expected to be September 13, 2011. The Commission announced that, absent further Commission action, the amended rule will take effect and a notice of the effective date of the Rule 14a-8(i)(8) amendment will be published.

As amended, Rule 14a-8(i)(8) narrows the categories of shareholder proposals concerning director elections that a company may exclude from its proxy materials. Specifically, newly amended Rule 14a-8(i)(8) will eliminate the ability of companies to exclude shareholder proposals that "relate to an election". Companies thus will no longer be able to exclude from their proxy materials binding (or precatory) shareholder proposals relating to bylaw amendments establishing procedures for shareholder nomination of director candidates, as long as the proposal is otherwise not excludable under Rule 14a-8 (e.g., because it is violative of state law under Rule 14a-8(i)(1)). The normal Rule 14a-8 minimum ownership and other eligibility requirements will continue to apply. This means that, where otherwise permissible under applicable state law (as is the case, for example, in Delaware), shareholders will be able to cause companies to implement a variety of proxy access standards that could be more permissive than those originally prescribed by Rule 14a-11, such as continuous ownership of a minimum of 3% for at least 3 years. Companies should begin to prepare now for the possibility of proxy access proposals from eligible shareholders for the 2012 proxy season.

For more information on the Court's decision, please see our Weil Briefing dated July 27, 2011 and available [here](#).

We will keep you posted on further developments.

If you have any questions on these matters, please do not hesitate to speak to your regular contact at Weil, Gotshal & Manges LLP or to any member of the Firm's Public Company Advisory Group:

Howard B. Dicker	(howard.dicker@weil.com)	+1 212 310 8858
Catherine T. Dixon	(cathy.dixon@weil.com)	+1 202 682 7147
Holly J. Gregory	(holly.gregory@weil.com)	+1 212 310 8038
P.J. Himelfarb	(pj.himelfarb@weil.com)	+1 214 746 7811
Robert L. Messineo	(robert.messineo@weil.com)	+1 212 310 8835
Ellen J. Odoner	(ellen.odoner@weil.com)	+1 212 310 8438

©2011. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list or if you need to change or remove your name from our mailing list, please log on to www.weil.com/weil/subscribe.html, or send an email to subscriptions@weil.com.