



BoardroomDirect

Alert: Federal Appeals Court rejects proxy access rule



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This supplement to our *BoardroomDirect* quarterly update series describes a recent U.S. Court of Appeals decision on the SEC's proxy access rule that directors need to be aware of.

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On July 22, 2011, the U.S. Court of Appeals for the D.C. circuit decided to reject the SEC's proxy access rule that would require a company to include in its proxy statement a shareholder's, or group of shareholders', director nominees that meet certain requirements. The court's decision is in response to a legal petition filed in September 2010 challenging the rule. The SEC agreed to delay implementation of the rule until the case was decided.

The judges unanimously determined that the SEC acted "arbitrarily and capriciously" by failing to adequately assess the economic effects of the rule. The decision states that the SEC "inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify 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."

The judges also ruled that the SEC did not seriously evaluate how shareholders from special interest groups, like union and state pension funds, might use the rule for their own objectives versus the goal of maximizing shareholder value. Furthermore, they said the SEC was inconsistent in how it determined the frequency of proxy access contests under the rule, and were critical of the SEC requiring investment companies to adopt the rule.

While we do not yet know what the SEC will do in response to the ruling – whether they will appeal the decision, develop a new proposal, or take other action – we do know proxy access rules will not be effective for the 2012 proxy season. However, shareholders may be able to submit proxy access bylaw proposals at companies this coming proxy season, if the stay order on this rule amendment is lifted, as this provision of the rule was not challenged in court. Shareholders can also continue to use conventional methods to nominate directors.

For additional information regarding the proxy access decision, please refer to:

- [U.S. Court of Appeals: Decision on Proxy Access Rule](#)
- [SEC: Statement Regarding Court of Appeals Decision on Proxy Access](#)

Thank you

Thank you for reading this special edition of *BoardroomDirect*. For additional information, visit [PwC's Center for Board Governance](#) website. If you have any questions, please contact your PwC engagement partner or simply respond to this message using the "Submit feedback" link below. We will be in touch again next quarter, or sooner with any further updates impacting corporate governance.

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