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## SEC Votes to Propose New "Proxy Access" Rules

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For the third time in ten years, the Securities and Exchange Commission will consider whether to adopt rules relating to "proxy access." On May 20, 2009, by a 3 to 2 vote, the Commission proposed rules that, if adopted, will require a public company to include information about stockholders' nominees to the company's board of directors in the company's proxy statement and to list stockholders' nominees on the company's proxy card. The rules would apply to all companies filing reports under the Securities Exchange Act, including investment companies, other than debt-only companies. The rules are intended to give stockholders greater influence on the composition of companies' boards of directors and, according to SEC Chairman Mary Schapiro, thereby permit stockholders to "hold Boards accountable."

The proposal has two parts: a new Rule 14a-11 and revisions to Rule 14a-8. New Rule 14a-11 would give stockholders access to the company's proxy materials, if the stockholders satisfy the rule's substantive and procedural requirements. Among other things:

- Stockholders would need to own a minimum percentage of the company's voting securities —1% of the voting securities of a large accelerated filer, 3% of the voting securities of an accelerated filer, and 5% of the voting securities of a non-accelerated filer—and have held their shares for at least one year. Stockholders would be able to aggregate their holdings to meet the applicable thresholds.
- Stockholders would not have access to a company's proxy materials if they are prohibited—either by applicable State law or the company's charter and bylaws—from nominating a candidate for election to the board of that company.
- The stockholders seeking access to the company's proxy materials would be required to certify that they are not holding their stock for the purpose of changing control of the company. Stockholders would be able to include information about one candidate, or candidates for 25% of the total board, whichever is greater, in the company's proxy materials.
- The stockholders' nominee or nominees must satisfy the objective independence

standards of the national securities exchange on which the company's shares are listed.

The amendments to Rule 14a-8 would narrow the "election exclusion," Rule 14a-8(i)(8), which currently permits companies to exclude stockholder proposals relating to an election of directors from the company's proxy statement. As revised, a company could not rely on Rule 14a-8(i)(8) to exclude a stockholder proposal to amend, or request an amendment to, provisions of the company's charter and bylaws that govern the company's nomination procedures or disclosures related to stockholders' nominees, so long as those disclosure provisions are consistent with proposed Rule 14a-11.

The proposed rules have not yet been released. The SEC has issued a press release that provides more information about the proposal. To read the press release, [click here](#). Public comments on the proposed rules are due within 60 days after the proposal appears in the Federal Register.

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