

November 28, 2007

SEC Votes to Permit Exclusion of Shareholder Proxy Access Proposals

The Securities and Exchange Commission (SEC) voted today to adopt a proposal affirming the SEC's previously held position that shareholder proposals on shareholder access to company proxy statements for director nominations are categorically excludable under Exchange Act Rule 14a-8(i)(8). The proposal was one of two that the SEC advanced last August on shareholder access. The companion proposal, which the SEC did not adopt, would have permitted shareholders to propose mandatory bylaw amendments to create procedures for shareholder proxy access. (See our memos of August 6, 2007, [SEC Proposes Two Alternatives on Shareholder Access to Director Nominations in Company Proxy Statements](#), and September 19, 2007, [SEC Proposals With Respect to Shareholder Proxy Access](#).)

The vote to approve the first proposal was 3-1, split along party lines. SEC Chairman Cox said the action was necessary to clarify the ground rules for the upcoming proxy season, and suggested that the SEC would revisit the issue of shareholder proxy access again next year. Predictably, shareholder activist groups have already begun to criticize the SEC's action, with one activist union, the American Federation of State, County and Municipal Employees (AFSCME), threatening litigation.

We have consistently opposed the proposals that have been advanced over the last several years to permit shareholders to use a company's proxy statement to run a director election contest. While a contested election may on rare occasion be a necessary last resort, proxy contests entail a number of potential negative effects and risks, which we have outlined in our memos, articles and comment letters to the SEC. The existing mechanisms for conducting an election contest are more than sufficient in light of these effects and risks. Moreover, shareholders have never had as many other, less disruptive, avenues through which to express their views as they have today. We applaud the SEC's decision, and we will continue to resist any further efforts to expand election contests through access to a company's proxy statement.

Martin Lipton
Andrew R. Brownstein
Steven A. Rosenblum
Adam O. Emmerich
David A. Katz

*If your address changes or if you do not wish to continue receiving these memos,
please send an e-mail to Publications@wlrk.com or call 212-403-1487.*