
2009 Proxy Access Proposal: Representative SEC Comment Letters

October 1, 2009

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Davis Polk & Wardwell LLP

2009 PROXY ACCESS PROPOSAL: REPRESENTATIVE SEC COMMENT LETTERS

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SEC's Proposal

Below is a brief summary of the SEC's proposal on certain key provisions in its June 10, 2009 Proxy Access Proposal. The following pages survey the opinions provided in comment letters by a broad cross-section of commenters on certain important aspects of the Proxy Access Proposal. A complete copy of the Representative Comment Letters, and the comment letters provided by others, can be found on the SEC's Website.

14a-11 Proposal: Federal Uniform Mandatory Proxy Access Proposal

	14a-8 Proposal	Opt-Out	Shareholder Eligibility Ownership Threshold	Shareholder Eligibility Holding Period	Number of Nominees	Nominee Independence/ Disclosure Requirement	First-to-File
<p>"Facilitating Shareholder Director Nominations"</p> <p>Release No. 33-9046, dated June 10, 2009.</p>	<p>Amend 14a-8 to enable shareholders to require the inclusion in company proxy materials of proposals to amend a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations.</p>	<p>No opt-out provided; Rules would apply to all companies subject to the SEC's proxy rules (except debt-only issuers).</p>	<p>Tiered; 1% for large accelerated filers, 3% for accelerated filers and 5% for non-accelerated filers.</p> <p>Aggregation of ownership of multiple shareholders would be allowed.</p>	<p>1 year.</p> <p>Shareholder must provide statement that they will continue to hold their securities until the applicable annual or special meeting and that it is the shareholder's intent to continue holding their securities after election.</p>	<p>Greater of 1 individual or 25% of the board.</p>	<p>Nominees required to satisfy the objective independence requirements of the national securities exchange on which the company's shares are traded.</p> <p>Shareholder must disclose amount and % of securities owned and represent they are not seeking change of control or more than a limited number of seats.</p>	<p>In the event of more shareholder nominees than are required for inclusion, first-to-file shall have priority.</p>

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

14a-11 Proposal: Federal Uniform Mandatory Proxy Access Proposal								
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UK Universities Superannuation Scheme <i>(UK Pension Funds)</i>	Approves proposal regardless whether 14a-11 is adopted or not.	--	--	All interests, including derivatives, should be disclosed.	Minimum of 2.	Shareholders should be allowed to substitute candidates.	Against first-to-file. Priority should be given to largest shareholder.	Strongly supports the proposed rule. SEC should treat the proxy statement as a shared communication tool that serves as a substitute for face-to-face interaction of the annual meeting.
CalPERS <i>(State Pension Fund)</i>	Approves proposal; however, 14a-8 alone would not be sufficient. Companies may resist proposals by adopting	--	As proposed. Loaned securities should count towards ownership threshold if those securities can be recalled and the votes cast.	As proposed.	Greater of 2 or 25% of the board.	Nominee must disclose holdings, qualifications and affiliation with the nominating shareholder.	Against first-to-file. Largest shareowner or group of shareowners should have their nominees included.	Under current rules, shareholders are locked out of decision-making process for board appointments and are unable to hold incumbent directors and company management accountable.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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	supermajority vote requirements and other related means.							Opposed to additional disclosure rules in 2007 rulemaking.
Ohio Public Employees Retirement Systems <i>(State Pension Fund)</i>	--	No exemptions. Only state laws or company bylaws that provide greater proxy access rights should override SEC rule.	As proposed; aggregation should be allowed.	2 years.	Less than 50% of the seats on the board or at least 2 nominees. Numbers should be based on total board size and not number available due to a staggered board structure.	Nominees should meet the same independence and disclosure requirements as the board's nominees. All nominees should be required to fully disclose all relationships between the candidates, the company, executives and directors, as well as nominating shareholder.	Against first-to-file. Priority should be based on (1) length of ownership; then (2) largest beneficial ownership.	Proposal should be immediately adopted. No triggering events.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Australian Council of Super Investors <i>(Foreign Pension Funds)</i>	--	--	Flat; 3%.	None; but at the maximum, 1 year.	Minimum of 2.	As proposed.	Against first-to-file. Largest beneficial ownership should have priority.	
California State Teachers' Retirement System <i>(State Pension Fund)</i>	Approves proposal.	No opt-out. Proposal will set minimum standards – 14a-8 may allow shareholders to expand that minimum as necessary.	As proposed. Percentage of securities owned must be clearly defined.	As proposed; but open to a longer time frame.	As proposed.	Nominees must meet the objective listing standards under applicable national securities exchange rules. No independence standards set by a company. Full and comprehensive disclosure should be given by nominating shareholders.	Against first-to-file. Shareholder / group with largest economic interests should have priority.	Exemption should be given to shareholders soliciting to form a group for nominations. No triggering events.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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United Brotherhood of Carpenters and Joiners of America <i>(Union Pension Fund)</i>	Approves proposal in lieu of adopting 14a-11.	--	--	--	--	--	--	Changes in state law and governance disclosure reforms is a better approach than uniform proxy access rule. Private ordering should be allowed.
American Federation of State, County and Municipal Employees <i>(Union Pension Funds)</i>	Approves proposal to allow for shareholders to adopt a more expansive proxy access regime.	No opt-out.	5% is high but sufficient for smaller companies. Aggregation should be allowed. Ownership threshold should be determined based on the lowest number of shares held	1 year; would support 2 years. Shareholders should be allowed to lend shares to a third party and use those shares in determining ownership threshold.	--	--	Against first-to-file. Largest shareholder or group should have priority.	Strongly in favor of adopting 14a-11. No triggering events. No word-limit on promotion of nominee in proxy.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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			during the holding period.					
Committee on Investment of Employee Benefit Assets <i>(Pension Funds)</i>	--	--	Tiered; 3-5% based upon net assets.	At least 2 years. Shareholders who divested themselves through derivative transactions should not be allowed to nominate directors. Shareholders must represent that they have not and will not hedge or otherwise divest themselves of economic ownership of	--	Any non-public contacts between shareholders and companies with respect to proxy access must be disclosed.	--	Concerned that a lack of competition among and oversight of the three proxy advisory services will lead to conflicts of interest. Rules must be re-drafted to favor long-term investors.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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				the requisite shares during holding period.				
Council of Institutional Investors <i>(Institutional Investors)</i>	Approves proposal.	No opt-out.	As proposed; however, prefers flat 3% with aggregation. Considers aggregation to be an “essential feature” of the proposal.	As proposed; however, prefers 2 years.	Less than a majority of the directors but never less than 2 candidates.	Nominees should qualify as independent under relevant objective stock exchange listing standards. In addition, nominating shareholders must represent there is no relationship or agreement between the nominee and the nominating shareholder, the company or its management. Strongly opposed to requiring nominee to be entirely independent of	Against first-to-file. Largest beneficial owner should have priority.	Reasonable access to corporate proxy materials for long-term shareholders would address problems surrounding director elections. Opposed to triggering events. Supports prompt issuance and implementation of the final rule.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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						nominating shareholder or group. Full disclosure required for relationships between director candidates and the company, company executives, and nominating shareholders.		
Capital Research and Management <i>(Fund Manager)</i>	Approves proposal; however, shareholders must own at least 5% to be allowed to submit bylaw amendments.	--	Tiered; 5%, 8% and 10% ownership thresholds.	No suggested period, but larger than 1 year.	--	--	--	Accept proposal but with modified suggestions to promote long-term shareholder value and discourage the nuisance of investors with a narrow, self-interested agenda.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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T. Rowe Price Associates <i>(Fund Manager)</i>	--	--	Flat; 5% threshold.	1 year (would not be opposed to 2 years). Beneficial ownership should equate to long-term economic ownership – not temporal, synthetic.	May not nominate candidates for more than 25% of the board's seats. Should in no case be limited to 1 nominee. Exclude nominee who was included in company's proxy the prior year but earned less than 10% of the votes cast.	--	Against first-to-file. Priority should be given to largest beneficial owners.	Investment companies should be excluded from the current proposal. Rules do not adequately address the significant difference between governance structures of funds and operating companies. SEC should take into account the operational difficulties that would arise if the rule applied equally to investment companies.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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								<p>Rule should not be extended to investment companies until more work is done.</p> <p>Additional framework is needed for companies with more than one class of securities and parent-controlled companies.</p>
Barclays Global Investors <i>(Fund Manager)</i>	--	--	Tiered; 5-15% (aggregation ok).	--	15-20% of the board – if percentage is not a whole number then the maximum number of seats should be rounded down to a	--	--	Argues for a narrowly tailored approach with triggering mechanisms pointing to a failure of a board to fulfill its nomination duty, prior to allowing access to

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Comment Letters

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					number not less than one.			<p>shareholder nominees.</p> <p>Triggering events, as contained in the 2003 access proposal, should be in place (<i>i.e.</i>, withhold votes from more than 50% of votes cast or shareholder proposal providing for shareholder nomination procedure receives 50% of the votes cast on the proposal).</p> <p>15% threshold should also be required for a shareholder to call a special meeting.</p>

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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								<p>Plurality vote should supersede company policy where the director nominees outnumber the available board seats.</p> <p>Sunset provision should be included.</p> <p>Exclude investment companies, pending more extensive review of how the proposed rule should be tailored to effect specific issues facing investment companies.</p>

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Association of British Insurers (UK Insurers and Fund Managers)	--	No opt-out.	As proposed.	No holding period should be required. Short positions and derivative instruments should be fully disclosed.	--	--	--	Majority voting should be implemented. Private ordering is not the way forward for proxy access. Proxy access rules should pre-empt state law.
TIAA CREF (Fund Manager)	Approves proposal.	No opt-out.	Flat; 5% threshold (w/ accumulation of shares allowed). For Investment Companies – 5% at the fund complex level (not individual fund level).	2 years. In addition, holders should be required to disclose any activity (i.e., hedging) that reduces the economic risk or meaningfully alters shareholdings.	As proposed; greater of 1 nominee or 25% of the full board.	Shareholder sponsor to certify that nominee meets objective but not subjective criteria for independence (safe harbor should be included to protect companies) and that purpose of proposing nominee is not to effectuate a change of control and will not do so for a year following election.	Against first-to-file. Priority to shareholders representing greatest amount of capital. Would support priority based on length of holding period.	Universal proxy card would provide a much more efficient and streamlined voting process. Other recent changes (i.e., majority voting, e-proxy) are complementary to and not replacement for proxy access.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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								Reimbursement of expenses for dissident campaigns. No need for triggers. Plurality voting should apply. Proposal should be in place in time for 2010 proxy season.
Pershing Square <i>(Hedge Fund)</i>	--	--	Threshold may be too low; none suggested.	--	--	No requirement for independence from nominating shareholder. Fair and full disclosure of affiliations and business relationships should be enforced.	Against first-to-file. Largest shareholder or group of shareholders should have priority.	--

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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ValueAct Capital <i>(Hedge Fund)</i>	--	No opt-out.	Flat; 10% for individuals or groups with aggregation. Higher threshold is necessary to prevent a flood of requests to include shareholder-nominees.	1-year period. Must be of a net-long position. Must hold securities through annual shareholders meeting. Shareholders should not be required to hold securities past relevant annual meeting.	As proposed; no more than the greater of one nominee or 25% of the board. No prohibition on affiliation between nominees and nominating shareholders or groups.	Only relevant stock exchange rules regarding director independence should apply. Issuer requirements should not apply to shareholder nominees.	Against first-to-file. Every individual or group who meets the ownership threshold should be allowed to propose a nominee provided that the ownership threshold is sufficiently high (<i>i.e.</i> , 10%).	14a-11 proposal should be adopted as proposed. 14a-11 should apply at federal level and pre-empt state law. No triggering events. SEC should impose exception from Section 16 liability. SEC should state that it is its intent that shareholder rights plans will not be triggered upon formation of a group of shareholders solely for the purposes of nominating a director pursuant to 14a-11.

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Comment Letters

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Group of 80 Bi-Partisan Professors <i>(Academics)</i>	--	--	--	--	--	Avoid eligibility or procedural requirements.	--	Proposed rules will improve director accountability. Adopt proposal in full as proposed without modification.
Professor Grundfest (Stanford Law) <i>(Academic)</i>	--	The proposed rules violate the APA. The legal issues can be cured by revising the proposal to allow for an opt-in regime whereby a majority of shareholders can determine whether the proxy access rules and conditions should be adopted.	--	--	--	--	--	Rules allow for shareholders to nominate directors but would not allow for the same shareholders to determine the rules and standards to access the proxy. Proposed rules erect barriers to shareholder action which do not exist under state law. Refine proposal to allow shareholder resolutions that define the terms

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Comment Letters

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Harvard Law / Business School Professors (Academics)	--	Any company shall be able to opt-out (complete or partial) upon a majority vote of outstanding shareholders. Companies should be required to periodically renew the opt-out (<i>i.e.</i> , every 10 years).	Flat; 5-10% with aggregation possible (adjust after 2010 proxy season).	As proposed. Some authors believe shareholders should be obligated to hold stock for a year following an election if successful in nominating a director.	--	--	--	and conditions under which a majority of shareholders can set the rules for proxy access. "Start slow" to ensure there is not unanticipated negative interactions.

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Comment Letters

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shareowners.org <i>(Non-profit Organization)</i>	Approves proposal.	--	--	--	--	--	--	Approves 14a-11 proposal in whole but would allow for shareholders to approve more liberal standards. For example, shareholders should be allowed to reduce the tiered beneficial ownership thresholds or required holding period.
Group of Nine Securities and Governance Law Firms <i>(Plaintiff's Bar)</i>	Approves proposal to permit stockholders to propose proxy access rules.	No opt-out provision should be added. Every security regulation establishes minimum requirements applicable to	--	--	--	--	--	Joins opinion of Group of 80 Bi-Partisan Professors comment letter (described above). The proposals should be adopted in whole.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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		all publicly traded companies, and thus an opt-out would be contrary to the entire regulatory scheme.						
RiskMetrics Group <i>(Proxy Advisor)</i>	Approves proposal; however, such amendment should not be allowed to over ride 14a-11. 14a-11 should be the floor that prescribes the maximum requirements that must be met by a shareholder	No opt-out.	As proposed; suggests a lower threshold than 5% for non-accelerated filers and small RICs.	1 or 2 years; should only be available to investors with significant long-term economic interest.	Greater of 1 or 25%. Count any director elected as a shareholder nominee as such, as long as they continue on the board. Cooling-off period (3 years) after which a director who	Disclosure should be made of nominator's existing and continuing economic and voting positions. Independence standards for nominees should not be higher than those for director nominees generally.	Against first-to-file. Shareholder or group representing the largest ownership stake should have priority.	--

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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	in order to place nominee on proxy.				is initially elected but subsequently nominated under board standard nominating process would no longer count for determining the maximum shareholder nominees in a subsequent election.			
Broadridge (Proxy Services)	--	--	--	--	--	--	--	It will take 5 months from the final rules, publication until technology and resources are set up to be able to accommodate the new rules.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Altman Group (Governance Adviser)	--	--	--	--	--	--	--	<p>Proposal will lead to increased costs for annual meetings.</p> <p>Proposal raises many questions and concerns that will need to be addressed prior to implementation.</p> <p>SEC review of proxy access is premature.</p> <p>SEC should focus on the mechanics of the proxy process instead of the architecture of corporate governance.</p>

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Comment Letters

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Group of Former SEC Senior Staff (SEC Staff Alumni)	--	--	--	--	--	--	--	<p>There are other matters in front of the SEC that need to be addressed before proxy access.</p> <p>Implementation and interpretation of the proposed rule will require substantial staff resources.</p> <p>Defer action on the proposed rule until more resources are available.</p> <p>In addition, certain state laws/rulings may alleviate any need to adopt the proposed rule.</p>

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Comment Letters

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Group of Seven Leading Corporate Law Firms <i>(Corporate Law Firms)</i> Cravath; Davis Polk; Latham & Watkins; Simpson Thacher; Skadden; Sullivan & Cromwell and Wachtell	Approves proposal to permit stockholders to propose proxy access rules. Private ordering should be allowed so that stockholders may modify the proxy access regime as they see fit.	Opt-out by either stockholder vote or ratification of board action. Private ordering should be allowed.	Flat; 5% for individuals; 7-10% for groups. Aggregation should be permitted, but limited to 10 persons. Beneficial ownership should be clearly defined to not include derivatives. Beneficial ownership should be defined to require both voting and dispositive power on a continuous "net long" basis.	1 year; shareholders must have, for such period, both voting power and a "net long" economic interest. If nominating shareholder sells its interests or develops a change of control intent prior to the meeting, such shareholder should no longer be eligible for proxy access	1 nominee. If nominee fails to receive 25% of the vote, then the nominating stockholder (or every member of the nominating group) shall be prohibited from making another nomination for the next 2 annual meetings.	Nominees should be required to satisfy any non-discriminatory, generally applicable director eligibility standards set forth in governing documents or corporate governance guidelines of a company. If independence requirements are not required, the nominating stockholder(s) should be required to disclose an expected failure to satisfy independence standards.	Against first-to-file. Rule should be based upon the size of a stockholder's holdings for the requisite holding period. Range of time: no earlier than 150 and no later than 120 days prior to the anniversary of the date the company mailed its proxy materials in the prior year.	Defer adopting rule until 2011 proxy season. The additional time will also allow the SEC to gain more experience with proxy access under private ordering in Rule 14a-8. Some of the provisions should be modified to prevent a shareholder from seeking a change of control. Rule should not apply during traditional proxy contest. Rules should not apply to controlled companies.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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				and the company should be permitted to issue supplemental proxy materials to reflect termination of nominee.	Incumbent proxy access directors and dissidents re-nominated by the company should count toward the 25% maximum.	If more than 1 candidate is allowed, nominees should be independent from the nominating shareholder(s). Additional disclosure requirements should be added, such as: relationship between nominator and nominee; nominator interests; duration of holdings; short positions and derivatives; and affiliates of nominator. Nominees should be excluded if materially false or misleading statements are provided.		Maximum Number of Nominees should be 25% of board seats that are not subject to pre-existing contractual nominating rights. Agreement among companies, nominating shareholders and nominees should not be precluded. Advance notice by-laws should not override the proposal's timing requirements. Universal proxy card should be adopted.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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								<p>Stockholders should have option to vote for management nominees as a group.</p> <p>There should be no exemption from the proxy rules for solicitations to form a group.</p>
Davis Polk <i>(Corporate Law Firm)</i>	Approves proposal to facilitate shareholder participation in the development of ground rules for proxy access.	--	Flat; 5-10% with aggregation allowed.	--	Directors nominated pursuant to agreements with shareholders and incumbents nominated in the past 3 years under 14a-11 should count towards the 25% limit.	--	<p>Against first-to-file.</p> <p>Largest shareholder should have priority.</p> <p>Window period for nominations should be established based upon the date the prior year's</p>	<p>Defer Rule 14a-11, and allow state law to develop and for companies to form their own proxy access guidelines through 14a-8 and other means.</p> <p>Rules should not apply during a traditional proxy contest.</p>

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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					Shareholder nominees elected should count towards limit.	--	proxy materials were mailed (180 days after the mailing for a period of 4 weeks).	Rules should not apply to a company for at least 3 proxy seasons after the conclusion of its IPO. Controlled companies should be exempt.
Business Law Section Corporations Committee (CA) <i>(Corporate Lawyers)</i>	Approves proposal to allow for private ordering and preserve shareholders' rights under state law.	Opt-out.	--	--	--	--	--	Mandatory rule would frustrate the exercise of shareholder's rights under California state law.

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Comment Letters

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Association of Corporate Counsel <i>(Corporate Lawyers)</i>	Approves proposal to permit shareholders to propose proxy access bylaws.	Opt-out. Companies should be allowed to formulate their own proxy access rules.	Flat; 5% for individual; 10% for group.	2 years. Shareholders must represent that they have not hedged or otherwise divested their economic interest; disclose their total position rather than just long positions; and disclose any arrangement that affects or could affect voting or economic rights. Shareholders must hold shares through	Only 1 nominee. No more than 15% of the board.	Rules should allow companies to implement procedures to gather sufficient info about the nominees and the nominating shareholders to verify ownership, intent, capacity and independence. Specific information on the nominating shareholder or shareholder group should be provided in the proxy. Nominee should be independent from nominating shareholder.	Should adopt a better time-line.	The SEC should adopt a 2-step approach: 1. shareholders suggest a candidate to nominating committee; and 2. if rejected, shareholders may be able to advance the candidate under proxy access rules.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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				the election and report any disposition during the initial term.				
Delaware State Bar Association <i>(Delaware State Bar)</i>	Approves proposal to allow for stockholders to propose proxy access bylaws.	Should be able to exercise Delaware state law rights.	No suggestion, but Delaware state law allows shareholders to decide the threshold needed.	No suggestion, but Delaware state law allows shareholders to decide the holding period requirement. Beneficial ownership should be defined.	No suggestions, but Delaware state law would allow shareholders to decide limit. Proposal would eliminate Delaware state law option to require notice of a nomination less than 108 calendar days before filing a definitive	No suggestion, but Delaware state law allows shareholders to adopt rules to limit relationships.	No suggestion, but Delaware state law would allow shareholders to decide on a priority rule.	A single rule will unnecessarily deprive Delaware corporations of the flexibility state law confers on them to deal effectively, and will undermine a key element of the state system of corporate governance that has been largely successful. Delaware law allows for proxy reimbursement instead of proxy access.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

14a-11 Proposal: Federal Uniform Mandatory Proxy Access Proposal								
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JPMorgan Chase <i>(Publicly Traded Financial Institution)</i>	Approves amendments to allow for shareholders to make proposal regarding proxy access and election of directors. Ownership threshold of 1% should be required for proposals. A company should be able to exclude a proposal from its proxy materials for any meeting held within 2	Opt-out. Companies should determine company-specific proxy access bylaws.	Flat; 5% for individuals, 10% for groups. Shareholder may not be a member of more than one group.	2 years. Beneficial ownership should be clearly defined and based upon a net long position.	Only 1 nominee. If the nominating shareholder's nominee fails to receive 25% of the vote, the nominating shareholder shall be prohibited from submitting another nominee for a period of 2 years. Maximum number nominated should	proxy statement. Shareholder nominator may not be seeking change of control. Nominee must be independent from nominating shareholder. Nominee must meet valid bylaw qualifications and director guidelines established by the company.	Against first-to-file. Largest shareholder should have priority. 30-day window period for nomination, at least 150 days before the date the company mailed its proxy materials for the prior year's annual meeting.	Shareholder nominees shall not be permitted if there is a traditional proxy contest. Company shall not be liable for false or misleading statements for shareholder nominators.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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	years of the last time the proposal was included if it received less than 25% of the vote.				constitute no more than 15% of a board.			
Comcast <i>(Publicly Traded Company)</i>	Approves proposal; however, would require a 1% threshold for the submission of proposals.	Opt-out. Rule should not pre-empt state law and private ordering.	Flat; 5% for individual, 10% for group.	2 years. Nominating shareholder should represent that it will hold the amount of securities through the next annual meeting (if situation changes, public disclosure should be required).	Only 1 nominee. Shareholder nominator may not nominate another nominee for at least 3 years if such nominee failed to receive at least 25% of the votes cast at the annual meeting.	No affiliation with nominating shareholder. Nominee must satisfy director qualification and independence standards and company's policies such as stock ownership guidelines. Nominating or governance committee should be able to make the determinations regarding director	--	Triggering events should be implemented (<i>i.e.</i> , criminal charges, delisting, failure to act on majority vote or failure to accept resignation). Once the maximum number of shareholder nominees permitted by the rule is elected to a board, the company should be exempt for a period of 3 years from the proxy

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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						qualifications and independence.		access rule so long as such nominee remains on the board during such period. Company should be exempt for 3 years if it voluntarily includes a shareholder nominee for director in its proxy materials.
GE <i>(Publicly Traded Company)</i>	Approves proposal to allow for shareholders to propose matters that relate to the director election process.	--	None suggested, but must be higher than 1%. Each company should be permitted to work with its shareholders to determine	Shareholders must disclose total position in the company.	25% is too high, would cause distraction for boards as large as GE's.	Minimum eligibility standards such as age and governance and confidentiality policies must be maintained.	Against first-to-file. Larger shareholders or groups should be given priority.	Proposal poses numerous workability issues that will take time to address. Proposal does not provide sufficient time frames for companies to make the required certifications about their directors.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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			the appropriate threshold of ownership for proxy access.						
Microsoft <i>(Publicly Traded Company)</i>	Approves proposal to allow shareholders to determine the parameters of their emerging state law access rights through the bylaw amendment process.	--	--	--	--	--	--		SEC should consider deferring adoption of 14a-11 for companies, like Microsoft, that have non-calendar fiscal years.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Intel <i>(Publicly Traded Company)</i>	Approves proposed rule to avoid a "one size fits all" approach and to encourage stockholders to manage their own companies' corporate governance practices.	--	Flat; 5% for individuals, 10% for groups. Each company should be permitted to allow its shareholders to determine the appropriate thresholds.	2 years pre-nomination holding period. Post-election holding period should also be required. Stockholders should be required to disclose any disposition of shares post-election.	25% of the board. Stockholders should not be permitted to re-nominate any proxy access directors for a period of 2 years if such nominee fails to receive a significant percentage of votes cast in such election (e.g., 30%).	Stockholders must disclose any significant relationship between the nominee and the nominating stockholder. Nominees must meet subjective independence criteria of applicable listing standards. Nominees should be subject to all of the company's requirements for board membership.	Against first-to-file. All stockholders with a requisite percentage of shares should be allowed to nominate their candidates; if there are more nominees than expected, the 25% limitation of the company's board should govern all available board slots.	SEC should provide additional guidance as to what would happen to nominated directors at the end of their terms. Voting for nominees as a slate should be allowed.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Business Roundtable <i>(Business Association)</i>	Prefers amendments to 14a-8 to allow for proxy access proposals in company proxy materials. An eligibility threshold of 1% should be implemented.	Companies should be able to opt out if state law allows for proxy access or if a company has adopted majority voting or a proxy access/ reimbursement bylaw.	Flat; 5% for individual; 10% for group. Nominating shareholders must certify that they intend to satisfy the ownership threshold for the duration of the nominee's service on the board, or at least through the term for which they have nominated the director.	2 years.	1 nominee limit, regardless of the size of the board. Incumbent director who was elected as a shareholder nominee shall count towards the limit.	Ability to nominate candidate in successive years should be linked to the success of the shareholder's candidate(s) in previous years. Shareholder must nominate candidate in person at annual meeting. Limit the relationship between shareholder and nominee as proposed in the 2003 Proposal. Companies should be able to set standards in company governing documents that must be met.	Against first-to-file. Shareholder holding the company's shares for the longest period of time should have priority.	"One size fits all" approach will supplant the shareholders' choice of the laws of the state of incorporation. Final rules should contain triggering events. There should be a 1 year transition period before any rule creating federal proxy access is implemented.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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						Nominees be able to satisfy subjective independence tests.		
Society of Corporate Secretaries & Governance Professionals <i>(Business Association)</i>	Approves proposal to allow shareholders to propose proxy access bylaws. Cap should be placed on number of nominees shareholders are allowed to elect through their proposal if approved. 1% ownership threshold to make proposal.	Company should be able to opt-out by adopting or implementing its own form of proxy access.	Flat; 5% for individuals, 10% for groups. Shareholders may not be members of more than one nominating group.	2 years. Beneficial ownership should be clearly defined as ownership of actual securities. Nominating shareholders must hold shares through the date of the shareholder meeting.	Only 1 nominee. If the nominating shareholder's nominee fails to receive 25% of the vote, the nominating shareholder shall be prohibited from submitting another nominee for a period of 2 years. At no time may shareholder	Nominating shareholders must certify they are not seeking a change of control. Nominee must be independent of nominating shareholder. Nominee must meet valid bylaw qualifications and director guidelines established by the company.	Against first-to-file. Notice of nomination should be given in a window of 120-150 days from the date at which the company mailed its proxy materials for the prior year's annual meeting. Largest shareholder shall have priority.	Private ordering should be permitted; companies and shareholders should be able to determine the proxy access procedure that works best for them. Shareholder nominees shall not be permitted if there is a traditional proxy contest.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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					nominees constitute more than 15% of the board.			Safe harbor for company for false or misleading statements based upon the nominating shareholder's proxy materials.
National Investor Relations Institute <i>(Business Association)</i>	Approves proposal to allow for shareholders to participate in amending the company's own proxy access and nomination process.	--	--	--	--	--	--	Proper approach to proxy access is at the state level. Proposed rule will increase costs of annual meeting. Skills and capabilities of board of directors will be inhibited.

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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<p>Group of Corporate Secretaries and Governance Professionals</p> <p><i>(Business Professionals)</i></p> <p>Air Products; Alcoa; Allstate; ConEd; Devon Energy; E.I. du Pont; Eli Lilly; Honeywell; Ingersoll-Rand; Intel; J&J; Kraft; Medco; Merck; Microsoft; Monsanto; Peabody; Pfizer; Pitney; Bowes; P&G; Reynolds; Ryder; Safeway; UnitedHealth; Verizon; Xerox</p>	<p>Approves proposal to permit shareholder proposals relating to director nominations and elections, including proxy access.</p>	<p>Opt-out.</p> <p>Companies should be able to determine proxy access regime on their own.</p>	<p>Flat; 5% for individuals, 10% for groups.</p>	<p>2 or 3 years.</p> <p>Must be of net-long position; nominating shareholders must disclose amount of voting securities owned and ownership duration.</p> <p>Nominating shareholder must hold such securities for the initial term of service of the nominated director.</p>	<p>Shareholder director nominee who does not receive at least 30% of the votes cast should be barred from being nominated again, by any shareholder or the company, for a period of 3 years.</p>	<p>Each company should be allowed to craft specific timing, disclosure, and certification requirements that will address legal requirements applicable to the company directors.</p>	<p>First-in ok, but priority should be given to largest shareholder who is first to file.</p> <p>Withdrawal or exclusion of first-in should not allow a second-in to be eligible.</p>	<p>Universal proxy access right will cause increased but unproductive proxy contests.</p> <p>Triggering events should be required.</p> <p>Company should have flexibility to structure proxy cards and notices to minimize the risk of inadvertent shareholder disenfranchisement and miscounting.</p>

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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					Shareholder who nominates a director who does not receive 30% of the vote, or who is actually elected, should be barred from being able to nominate any individual for a period of 3 years.			
					Notice must be given at a minimum of 150 days prior to the date of the prior year's proxy statement.			
					Should be a time frame for beginning and end of submission.			

2009 Proxy Access Proposal: Representative SEC Comment Letters

Comment Letters

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Chamber of Commerce of the United States of America <i>(Business Association)</i>	Against the proposed 14a-8 proposal.	--	--	--	--	--	--	Strongly against the proposed rule 14a-11. Does not offer details as to proposed changes. Believes adopting rule would be against SEC authority, costly and disruptive, and an impairment on the function of boards to the detriment of shareholders.
Securities Industry and Financial Markets Association <i>(Financial Institution Association)</i>	Approves proposal.	Favors opt-out. Private ordering should be allowed.	5% for individuals; 10% for groups. Beneficial ownership should be determined based on "net long" positions.	2 years. Shareholders should be obligated to hold stock throughout the shareholder-nominated director's term.	Greater of 1 or 25%.	The shareholder nominee should meet both the objective and subjective listing standards for independence.	Against first-to-file. Largest shareholder should have priority.	Prefers the more tailored approach permitted by private ordering under Rule 14a-8 as opposed to the "one-size-fits-all" approach in the 14a-11 proposal.