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Worth Moving to Texas For?

April 25, 2011 | Client Update

Last year a Texas judge allowed Apache Corp. to exclude a shareholder proposal from John Chevedden on the basis that his broker statement did not come directly from a "record holder" in DTC, but rather an introducing broker. Consistent with its own precedent, the SEC rejected that line of reasoning in several Rule 14a-8 no-action rulings, including a no-action request from Texas company Kinetic Concepts in March. A month later the same Texas judge permitted KBR to omit a shareholder proposal following the Apache holding.

Immediately thereafter, Kinetic Concepts informed the SEC that they intend to omit Chevedden's proposal by relying on the judge's ruling, noting that the SEC staff has stated previously that the SEC will defer to the courts regarding exclusion of shareholder proposals. Apache had similarly notified the SEC this season, without submitting a no-action request. With three Texas companies omitting Chevedden proposals, activists are urging the SEC to take action to stop the "Texas Secession" and have provided form letters that can be sent to Commissioner Schapiro at the SEC.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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