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SEC Declines to Seek Rehearing on Proxy Access but Allows Related Rule 14a-8 Amendment to Become Effective

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The SEC issued a press release today confirming that it is not seeking rehearing of the court decision to vacate the proxy access rule it had adopted, Rule 14a-11. Of particular interest is the last paragraph of the release, indicating that the related amendments to Rule 14a-8 will go into effect when the court's decision is finalized, which is expected to be September 13th, absent further Commission action.

At the time of the filing of the lawsuit in fall 2010, the Commission issued a stay on both Rule 14a-11 and related amendments to the Commission's rules pending resolution of the matter, including the amendment to Rule 14a-8. The Commission's order indicated that it stayed the effectiveness of the amendment to Rule 14a-8 because the amendment "was designed to complement Rule 14a-11 and is intertwined."

Specifically, the amendment to Rule 14a-8(i)(8) repeals the current exclusion of a shareholder proposal that relates to a nomination or an election for membership on the company's board of directors or a procedure for such nomination or election, other than a proposal that (a) would disqualify a nominee who is standing for election; (b) would remove a director from office before his or her term expired; (c) questions the competence, business judgment or character of a nominee; (d) seeks to include a specific individual in the company's proxy materials for election to the board; or (e) otherwise could affect the outcome of the upcoming election of directors.

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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