

Study on Proxy Access Claims Significant Benefits and Little Downside in Adopting Proxy Access; and is Cited in Shareholder Proposals

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A [study](#) by the CFA Institute has been quoted in shareholder proposals seeking proxy access for a particularly notable statement: that proxy access has the potential to raise U.S. market capitalization by between \$3.5 billion and \$140.3 billion.

The report challenges the D.C. Circuit Court's holding that the SEC should have provided more detailed cost-benefit analysis when the Commission adopted the rule, since there were limited examples globally, and limited availability of corresponding market impact data, at that time. Since then, however, several event studies have been conducted. The report analyzes those studies to determine whether the availability of proxy access would be beneficial or harmful to market performance, stock performance, and board performance and whether the potential use of proxy access by special interest groups would reduce shareholder wealth. In essence, the analysis claims to quantify the value of proxy access.

By examining about 16 companies that have adopted proxy access globally, including four U.S. companies, the report concludes that the event studies show that slightly more than half of the companies experienced positive one-day returns following proxy access, 63% had positive returns in the year following the adoption, and around 71% outperformed their industries. Some of the event studies demonstrated negative outcomes, and a few were not included due to what the report deemed to be faulty methodology.

Examining the use of proxy access in other jurisdictions, particularly in the U.K. and Australia, which are said to have similar types of proxy access to the rules originally adopted by the SEC, the study found that investors have used proxy access to nominate directors in a limited manner over three years, including 11 times in Australia (only once successfully) and 16 times in the U.K. (successfully eight times). In addition, it has been used once in Canada during that time period.

On the basis of these findings, the CFA Institute urges the SEC to revisit the proxy access rule, given the data that is now available which purports to provide more information for a fuller cost-benefit analysis.

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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