

SEC Clears the Way for “Private Ordering” for Proxy Access; Related Rules also Effective

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The SEC's changes to Exchange Act Rule 14a-8(i)(8), which went into effect yesterday, generally will require companies to include in their proxy materials shareholder proposals addressing the director nomination process. The new rule empowers shareholders to seek to implement proxy access on a company-by-company basis rather than through a universally applicable procedure as would have been the case under the now vacated Rule 14a-11. Unlike Rule 14a-11, which would have given shareholders the immediate ability to include director nominees in the company's proxy, the changes to Rule 14a-8(i)(8) pave the way for a two-step process for proxy access. The following memorandum summarizes the SEC's newly-effective rules and discusses the options your company may have if it receives a proxy access proposal.

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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