

Solicitation Filings in Support of Proxy Access by CalPERS and New York City Pension Funds

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Companies with proxy access shareholder proposals on their annual meeting ballots are confronting a [notice of exempt solicitation](#) filed by the California Public Employees Retirement System (CalPERS) and the New York City Pension Funds urging shareholders to vote in favor of the proposals.

A notice of exempt solicitation is coded as PX14A6G and can be a surprise to companies when it appears on the company's SEC EDGAR website.

The exempt solicitation argues that providing access to a company's proxy to allow shareholders (or "shareowners" according to the notice) the ability to nominate directors to the board is "one of the most important rights given to the owners of a company." Without proxy access, director elections are essentially "a ratification of corporate management's slate of nominees."

It defends the proposed terms of proxy access in the proposals that seek to give the rights to shareholders owning 3% for 3 years by citing to the SEC proxy access rulemaking in 2010. According to the notice, the SEC's analysis in formulating that standard was carefully considered as appropriately balanced. The notice also refers to the CFA Institute study on proxy access which we previously discussed [here](#), including the oft-quoted projection that proxy access has the potential to raise U.S. market capitalization by between \$3.5 billion and \$140.3 billion and also that proxy access is rarely used in the jurisdictions where it is available.

Finally, a number of companies of varying sizes, such as Abercrombie & Fitch, Bank of America, Big Lots, First Merit, General Electric, Kindred Healthcare, Prudential Financial, Splunk, Staples, Wendy's, Whiting Petroleum, and Yum Brands, are listed as companies that are "voluntarily adopting" the provisions and "rejecting the common corporate assertion that proxy access is costly, distracting, and favored mainly by special interest groups."

The letter is signed by Anne Simpson, senior portfolio manager-investments and director of CalPERS Global Governance, and Scott Stringer, New York City Comptroller. A proxy solicitor, Garland Associates, is listed as a contact for additional information.

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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