

Proxy Access – a Decision Framework

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Proxy access is back in the news and back on the agenda for many U.S. public companies. Four years after the DC Circuit invalidated the SEC's proxy-access rule, we are seeing company-by-company private ordering with a vengeance, including a record number of Rule 14a-8 shareholder proposals in the current 2015 proxy season. Events have moved at high speed in the past few weeks, leading many companies to wonder whether they should be initiating their own approach to proxy access.

As [we argued](#) in 2009 in response to an earlier SEC proxy-access proposal, we believe that each company's approach to proxy access should be grounded in a consideration of its particular circumstances. Despite recent high-profile adoptions of proxy-access procedures, we don't believe that most U.S. public companies should, in knee-jerk fashion, be preparing to revise their bylaws proactively. We do, however, think that boards should be assessing on an ongoing basis the broader issues of board composition, tenure and refreshment, which are not only important in their own right but also relevant to potential vulnerability to proxy-access proposals. We also think that boards should communicate a willingness to exercise their discretion in considering all shareholder suggestions regarding board membership in order to assure shareholders of a means of expressing their views and to create a level playing field for shareholders.

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.

George R. Bason, Jr.
+1 212 450 4340
george.bason@davispolk.com

John A. Bick
+1 212 450 4350
john.bick@davispolk.com

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com

Bruce K. Dallas
+1 650 752 2022
bruce.dallas@davispolk.com

Arthur F. Golden
+1 212 450 4388
arthur.golden@davispolk.com

Joseph A. Hall
+1 212 450 4565
joseph.hall@davispolk.com

Michael Kaplan
+1 212 450 4111
michael.kaplan@davispolk.com

Margaret E. Tahyar
+1 212 450 4379
margaret.tahyar@davispolk.com

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