

October 5, 2010

**Update on the SEC's Proxy Access Rules**

Last Wednesday, as we were updating you on the Maryland law implications of the SEC's new proxy access rules ([see Maryland Law Implications of the SEC's Proxy Access Rules, 9-29-10](#)), the Business Roundtable and the U.S. Chamber of Commerce filed a petition with the United States Court of Appeals for the District of Columbia Circuit seeking review of the new rules. Yesterday, the SEC issued an order staying the effect of new Rule 14a-11 and related amendments to the rules.

In addition, we have learned from Staff of the SEC that the Staff believes that the proxy access rules do not override state law-governed advance notice provisions in bylaws so long as the advance notice provisions do not prevent compliance with the proxy access rules. An example given to us was that a bylaw provision permitting proxy access only to holders of five percent of the company's voting stock held for at least five years would violate Rule 14a-11. Further, we were told that members of the Staff have been telling the investor community that, before investors avail themselves of proxy access, they should be sure to carefully review the company's advance notice provisions as well. Although the Staff's interpretations in this regard do not appear -- certainly not with any clarity -- in the SEC's new rules or the adopting release, the Staff has told us that these interpretations are consistent with the principle that proxy access is dependent upon a stockholder's right to nominate directors under state law.

Because of these developments, we are recommending to clients that they refrain from taking any further action to amend advance notice bylaws pending clarification of the status and interpretation of these rules.

\* \* \* \*

We are available to discuss any of the foregoing matters.

Jim Hanks  
Patsy McGowan  
Michael Leber

*This memorandum is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations for which Venable LLP has accepted an engagement as counsel to address.*