SEC Adopts New Rules Strengthening Shareholders' Ability to Nominate Members of the Board of Directors

Date: 09/03/10

On August 25, 2010, the Securities and Exchange Commission ("SEC"), by a vote of 3 to 2 of its commissioners, published an adopting release (the "Release") establishing new rules to provide shareholders with the ability to more effectively nominate and elect directors to boards of directors of publicly reporting companies. Specifically, the new rules will allow a shareholder or shareholders holding at least 3% of the outstanding shares of a company continuously for three years to nominate a director for inclusion using the company's proxy solicitation materials. Until now, the inclusion of shareholder nominees in a company's proxy materials has been principally governed by state law, and the federal proxy rules, as promulgated by the SEC, have focused on some aspects of the process by which nominees are included. The new rules are part of the overall initiative of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, which expressly authorized the SEC to enact rules increasing shareholders' ability to access proxy materials. Additionally, the Release amends certain rules previously enacted by the SEC under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), which aim to strengthen shareholders' ability to propose amendments to a company's governing documents to establish procedures for including shareholder nominees in proxy materials.