
UPDATE: Amendments to Proxy Rules Designed to Facilitate Nomination of Directors by Shareholders Will Not be Finalized Until Early 2010

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I. Delay in Vote on Finalized Rules

It now appears the Securities and Exchange Commission ("SEC" or "Commission") will not vote until early 2010 on finalizing a proposed series of proxy access related amendments to the proxy rules under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). This delay means the proposed amendments are unlikely to be effective in time to apply during the spring 2010 proxy season. The proposed amendments, which were published in a release dated June 10, 2009 (the "June 10 Release"), are designed to permit eligible shareholders to access company proxy materials for the purpose of including nominees for election to the board of directors. The June 10 Release generated in excess of 500 comment letters, which the SEC is still in process of reviewing. In an October 2, 2009 speech before the Corporate Counsel Institute, in the context of discussing proposed Exchange Act Rule 14a-11, SEC Commissioner Elisse B. Walter (one of three Commissioners to vote in favor of publishing the proposed rules) voiced her doubts over whether the Commission would be in a position to make a fully informed decision in November, as had been expected, and further stated that while she would have preferred to have the new rules in place in time for the 2010 proxy season, "[e]xcellence should triumph over speed."