

Update: SEC Re-opens Comment Period on Shareholder Access Proposal

The Securities and Exchange Commission (“SEC” or “Commission”) recently announced that the comment period for the shareholder access proposal issued in June 2009 would be re-opened, and that the new comment period will end 30 days after publication in the Federal Register.¹ Proposed are amendments to the federal proxy rules designed to permit eligible shareholders access to company proxy materials for the purpose of including nominees for election to public company boards of directors.²

The initial comment period closed on August 17, 2009. The Commission re-opened the comment period to allow interested persons to comment on additional data and analyses added in the public comment file following the closing of the initial comment period.³ The announced extension is consistent with SEC Chairman Mary L. Schapiro’s October 2009 announcement that the SEC would not vote on the proposal before early 2010.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com; or Lindsay Flora at 212.701.3429 or lflora@cahill.com

¹ *Proposed Rule: Re-Opening of Comment Period*, Release Nos. 33-9086; 34-61161 (December 14, 2009), available at <http://www.sec.gov/rules/proposed/2009/33-9086.pdf> (the “December 14 Release”).

² *Proposed Rule: Facilitating Shareholder Director Nominations*, Release No. 34-60089 (June 10, 2009), available at <http://www.sec.gov/rules/proposed/2009/33-9046.pdf>. For a more detailed discussion of the June 10 Release, see [*Update-SEC Publishes Proposed Rule Amendments to Facilitate the Rights of Shareholders to Nominate Directors*](#) (July 14, 2009), available at <http://www.cahill.com/news/memoranda/000178>.

³ The SEC’s public comment file relating to the proxy access proposal is available at <http://www.sec.gov/comments/s7-10-09/s71009.shtml>. The SEC specifically noted the following materials in the December 14 Release: *Report on Effects of Proposed SEC Rule 14a-11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable*, NERA Economic Consulting (submitted on August 17, 2009 by the Business Roundtable); *Why Did Some Banks Perform Better During the Credit Crisis? A Cross-Country Study of the Impact of Governance and Regulation*, Andrea Beltratti and Rene M. Stulz (submitted on September 11, 2009 by the Business Roundtable); *The Limits of Private Ordering: Restrictions on Shareholders’ Ability to Initiate Governance Change and Distortions of the Shareholder Voting Process*, The Corporate Library (submitted on November 18, 2009 by the Shareowner Education Network and the Council of Institutional Investors); and Supplemental analysis of share ownership and holding period patterns from Form 13F data by the SEC’s Division of Risk, Strategy, and Financial Innovation, dated November 24, 2009.