

SEC DELAYS EFFECTIVENESS OF “PROXY ACCESS” RULES

In an unanticipated move, on October 4, 2010, the Securities and Exchange Commission (the “SEC”) stayed implementation of its recently adopted proxy access rules. As a result of the stay, it is unlikely that the rules will be in effect for the 2011 proxy season.

The SEC delayed implementation of the rules in response to a motion filed with it by the Business Roundtable and the Chamber of Commerce of the United States of America,¹ which also filed a petition for judicial review of the rules in the United States Court of Appeals for the District of Columbia Circuit.² In the petition, the two business groups argued, among other things, that Exchange Act Rule 14a-11 and related provisions are “arbitrary and capricious,” and sought to have these rules overturned. Absent the stay, the rules would have become effective on November 15, 2010.

The SEC did not address the merits of the petitioners’ claims and also stayed implementation of a related amendment to Rule 14a-8 pending review of Rule 14a-11 by the Court of Appeals. The SEC explained that the amendment to Rule 14a-8 was “designed to complement Rule 14a-11 and is intertwined, and there is a potential for confusion if the amendment to Rule 14a-8 were to become effective while Rule 14a-11 is stayed.”

The business groups represented that if the SEC granted the stay they would join in a motion seeking expedited review by the Court of Appeals. We will circulate additional client memoranda regarding any significant developments in the case.

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If you have any questions relating to the proposed proxy access rules, please contact David K. Boston (212-728-8625, dboston@willkie.com), Michael A. Schwartz (212-728-8267, mschwartz@willkie.com), Adam M. Turteltaub (212-728-8129, aturteltaub@willkie.com) or the Willkie attorney with whom you regularly work.

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¹ In re Business Roundtable, File No. S7-10-09, Order Granting Stay (Oct. 4, 2010).

² Business Roundtable, et al. v. SEC, No. 10-1305 (D.C. Cir., filed Sept. 29, 2010).