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## SEC Confirms That Rule 14a-8 Will Be Available for Proxy Access Bylaw Proposals in 2012

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### Related Rules, Including Schedule 14N, Also Take Effect

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As anticipated, the Securities and Exchange Commission's revisions to Rule 14a-8 have taken effect, allowing shareholders to use a company's proxy materials to propose proxy access bylaws and other election or nomination procedures. Yesterday, the SEC issued an effectiveness order confirming that the existing stay of the changes to Rule 14a-8 expired upon the finalization of the decision by the U.S. Court of Appeals for the D.C. Circuit vacating Rule 14a-11, the SEC's mandatory proxy access rule. These developments mean that "private ordering" of proxy access will be available to shareholders and public companies in the upcoming proxy season. It remains to be seen how common shareholder proposals will be on this subject, the level of support they will receive, and how companies will respond to developments in this area. In any event, it is not clear that proxy access will become common among public companies and we expect there will be significant variation in the key terms of proxy access bylaws before any market standards develop.

The SEC's effectiveness order relates not only to Rule 14a-8, but also to the other related rules adopted as part of the proxy access rule changes (other than Rule 14a-11). Many of these related rules seem to have no practical impact because they relate only to the now-vacated Rule 14a-11 – these include the exemptions from the proxy rules for solicitations by nominating shareholders to form a nominating group or in support of a candidate, as well as the safe harbor for Schedule 13G eligibility. As they now stand, these provisions do not apply to nominations made through a company's proxy access bylaws.

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Some of the new rules, however, will have an impact on nominations made through a company's proxy access bylaws. These include Rule 14a-18, which requires the nominating shareholder to file a Schedule 14N containing specified information and representations, and Rule 14a-6, which confirms that inclusion of a proxy access nominee will not require filing of a preliminary proxy.

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