

# PUBLICATION

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## Proxy Contests - The Company's Great Debate

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As the 2012 proxy season gets into full swing, public companies may find themselves in receipt of shareholder proxy access proposals and faced with the question of how to react to such proposals. As of February 1, 2012, shareholder activist group Institutional Shareholder Services (ISS) reported that there were 18 proxy access proposals filed for the 2012 proxy season. The companies that have received these proposals include notable names such as Hewlett-Packard, Bank of America, Sprint Nextel and Goldman Sachs. Companies must first analyze what the proposal means for the company, then make the decision whether to fight the proposal or negotiate with the proposing shareholder.

Pursuant to SEC Rule 14a-8, shareholders are permitted to include a proposal regarding the election of directors in the company's proxy statement. For example, shareholders may propose that a company's bylaws be amended to provide that shareholders are allowed to nominate directors to the company's board of directors. Companies receiving such proposals must choose whether to fight the proposal or to negotiate with the proposing shareholder and seek a resolution before a proxy contest. To fight a shareholder proposal, a company can campaign against the proposal in the proxy materials and try to obtain enough shareholder votes to block the proposal's passage, but the potential exists that such a campaign will be unsuccessful and the proposal will pass. Alternatively, a company can negotiate with the proposing shareholder and perhaps reach a compromise that would be more favorable to the company than the shareholder's initial proposal. Because a proxy contest can be extremely costly to a company, management should carefully consider the company's options, and consultation with an attorney is highly recommended.

These issues related to shareholder proxy access come in the wake of recent developments related to the SEC's attempted enactment in 2010 of Rule 14a-11, which would have provided shareholders with the ability to access a company's proxy statement for the purpose of nominating a director for election to the company's board of directors. Implementation of the Rule was stayed as a result of litigation challenging Rule 14a-11. In 2011, Rule 14a-11 was struck down by the United States Court of Appeals for the D.C. Circuit. (For more information on the Rule 14a-11 litigation, [click here](#).) During the litigation, the SEC stayed the implementation of certain other Rules that had been enacted in connection with Rule 14a-11, including Rule 14a-8. After the litigation, the SEC lifted several of the stays, including the stay of Rule 14a-8. (For more information on Rule 14a-8, [click here](#).)

Our attorneys are experienced in proxy contests and other proxy-related matters. If you have questions about proxy access proposals or any other public company matter, please contact your Baker Donelson attorney.