



# Dodd-Frank Financial Reform Law

# ALERT

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LOEB & LOEB adds Knowledge.

## SEC Proxy Access Rule Overturned

A federal circuit court has overturned an SEC rule, adopted in August 2010, that would have required public companies to include in their proxy materials stockholder nominees for election as director. The SEC had stayed effectiveness of the rule pending the outcome of this litigation.

Subject to limitations, the rule would have required a company to name in its proxy materials, as a candidate for election by stockholders, an individual nominated by persons holding, for at least three years, at least 3% of a company's voting stock. Any individual so elected would displace a nominee proposed by the board.

The court invalidated the rule because it held the SEC's cost-benefit analysis, required by the statute under which the rule was promulgated, inadequate. Among other things, the court believed that the SEC analyzed costs and benefits of the rule inconsistently, underestimated the costs of board opposition to stockholder nominees, and failed to consider sufficiently prospects that particular types of stockholders might use the rule to further their own interests at the expense of stockholders generally.

The SEC has not yet determined whether it will appeal or acquiesce in the decision.

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