

## ***Advocacy Supports SEC's Short Proposal Excluding Shareholder Proposals on Proxy Access***

On August 3, 2007, the Securities and Exchange Commission (SEC) released two alternative proposals on shareholder proxy access, *Shareholder Proposals Relating to the Election of Directors* ("Short Proposal") and *Shareholder Proposals* ("Long Proposal"). Advocacy recommends that the SEC choose the Short Proposal because it reaffirms the SEC's long-held position excluding shareholder proposals on election procedures such as shareholder proxy access, and adds no costs to smaller public companies. Advocacy's letter to the SEC may be accessed at: <http://www.sba.gov/advo/laws/comments/>.

- Rule 14a-8 of the Securities and Exchange Act of 1934 ("Exchange Act") creates procedures for certain shareholders to present proposals in the company's proxy materials. Rule 14a-8(i)(8) provides that a company can exclude a shareholder proposal that "relates to an election for membership on the company's board of directors or analogous governing body." If a shareholder seeks to nominate their own nominees for the board of directors, the contesting party must pay the costs of soliciting their own proxy statements.
- Both the Short and Long Proposal seek to address the issue of whether companies can exclude shareholder proposals amending future election procedures, such as allowing shareholders access to company proxy statements to nominate their own candidates to the board of directors. The Short Proposal reaffirms the SEC's long-held position that shareholder proposals that result in an election contest, such as shareholder proxy access, may be excluded under federal law. This proposal adds no costs to smaller public companies.
- The Long Proposal would allow certain shareholders to include in company proxy materials their proposals seeking to amend election procedures, such as proposals permitting shareholder proxy access. The Long Proposal is likely to have a disproportionate impact on smaller public companies. Small entities will be affected due to the low ownership requirement and the SEC has not quantified the costs associated with these proposals.
- If the SEC adopts the Long Proposal, Advocacy recommends that the SEC revise their Initial Regulatory Flexibility Analysis to provide an estimation of the potential costs of this rulemaking on smaller public companies. Advocacy also recommends that the SEC limit the applicability of this rule to accelerated filers or public companies with more than \$75 million in public float.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at [janis.reyes@sba.gov](mailto:janis.reyes@sba.gov) or by phone at 202-619-0312.