

POLICY BRIEF

PROXY ACCESS IN THE UNITED STATES

Proxy access allows shareowners to place director nominees on a company's proxy ballot. This right is available in several other key, developed markets but not uniformly in the United States. A wide range of supporters of proxy access argue that it serves as an effective counterbalance to director entrenchment, and increases the overall focus and accountability of corporate boards. Opponents of proxy access contend that special interest groups will hijack the board nominations process and create significant disruption for the company, its managers, and even shareowners.

POLICY DEVELOPMENTS

The US Securities and Exchange Commission (SEC) most recently attempted to grant shareowners proxy access in 2010, when it [approved a proxy access rule](#) (Rule 14a-11) pursuant to section 971 of the Dodd-Frank Act.

A lawsuit stayed the proxy access rule when the US Court of Appeals for the District of Columbia Circuit struck down the rule in 2011, stating that the regulator had failed to adequately consider its economic effects. CFA Institute published [Proxy Access in the United States: Revisiting the Proposed SEC Rule](#) to address concerns raised by the DC Circuit Court by analyzing available studies on the costs and benefits to shareowners of the SEC's attempt to grant proxy access. We also look at how proxy access works in other markets to further address the perceived benefits and costs of such a rule.

The report examines whether proxy access would have been beneficial or harmful to market performance, stock performance, and board performance, and whether the potential use of proxy access by special-interest groups would have reduced shareowner wealth. Event studies show that US markets tend to look favorably on proxy access and that proxy access appears to improve board accountability. Evidence from markets outside the US with proxy access already show that the right is rarely exercised because it is difficult for special-interest groups with relatively small ownership stakes to get directors nominated to a board.

CFA INSTITUTE ACTIONS

How we've spoken out on issues related to proxy access:

- [Lingering Investor Questions about Proxy Access](#) (Video) (May 2011)
- [Letter to U.S. Congress on Proxy Access in Financial Reform Legislation](#) (June 2010)
- [Testimony of James Allen, CFA, on Corporate Governance and Shareholder Empowerment before a U.S. House of Representatives Subcommittee](#) (April 2010)
- [Comment Letter to U.S. House of Representatives on Proxy Access](#) (November 2009)
- [Letter to U.S. SEC on Facilitating Shareholder Director Nominations](#) (September 2009)

CFA INSTITUTE VIEWPOINT

- Limited proxy access examples and director nominations on a global basis, coupled with the limited availability of corresponding market impact data, challenge whether a more detailed cost-benefit analysis was possible in the context of the DC Circuit Court's decision.
- The results of existing event studies suggest that proxy access has the potential to enhance board performance and raise overall US market capitalization. The event studies offer insight because of the unique opportunity created by the Court's stay of the SEC rules, and would not have been possible at the time the SEC initially proposed the rules.
- Proxy access is used infrequently around the world, even where low thresholds for ownership and duration of ownership exist. Evidence in these markets suggests that proxy access has not disrupted the election process in jurisdictions that allow it.
- There is limited evidence to suggest that special interest groups can use proxy access to hijack the election process or pursue special interest agendas. Ownership thresholds to use proxy access are relatively high, and if reached, an investor still must convince those holding 50% of a company's shares to support their board candidate(s).