

Client Alert

February 2015

New Developments Concerning Proxy Access

As you may be aware, General Electric Company [announced](#) yesterday that it had amended its By-Laws to allow for proxy access. We also understand that TIAA-CREF has begun contacting many other large-cap US public companies requesting that they implement proxy access. Proxy access has long been the focus of retail activists, and thus made many institutional investors wary of its consequences. As a well-known, long-term investor, however, TIAA-CREF's advocacy on this issue is important and may put more pressure on many companies.

Until recently, there seemed to be little momentum in favor of proxy access. It now appears that careful consideration of the issue is warranted. As has been well-reported, New York City pension funds conducted a coordinated [campaign](#) in which they submitted 75 proxy access proposals for the 2015 proxy season. Moreover, General Electric's adoption of a proxy access bylaw – combined with the many management proposals to be considered during the 2015 proxy season – may usher in a new era in which proxy access becomes more common.

To the extent proxy access continues to gain traction, the terms and limitations of proxy access bylaws will be paramount. On February 11, 2015, CalSTERS [updated](#) its corporate governance principles and reiterated its support for a 3%/3-year proxy access right – which corresponds to the rules previously adopted by the Securities and Exchange Commission (“SEC”) but struck down by a federal court. Of course, a proxy access right to 3% stockholders at large-cap companies like General Electric is quite different than the same right afforded at mid-cap and small-cap companies. In prior proxy seasons, institutional investors generally did not support retail shareholder proposals to provide proxy access at thresholds lower than the SEC's rule. This year, shareholders will consider several management-sponsored proposals with higher thresholds. Many large institutional investors are currently evaluating their internal voting policies on this issue.

Proxy access bylaws are authorized by statute in both Delaware and Virginia. The Virginia Stock Corporation Act, however, specifically provides that a shareholder-adopted proxy access bylaw cannot limit the authority of the board of directors to amend or repeal any condition or procedure in that bylaw in order to provide for a reasonable, practicable, and orderly process.

Companies should monitor these developments closely and be prepared to respond in a thoughtful manner when engaged on this issue with institutional investors. If you have any questions, please do not hesitate to contact us.

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