

September 3, 2010

## The SEC's New Proxy Access Procedures and Related Rules

On August 25, 2010, the Securities and Exchange Commission approved final rules establishing a federally mandated procedure to allow shareholders access to a company's proxy materials for the purpose of nominating a short-slate of directors for election in opposition to the board's nominees. While the final rules account for differing proxy access procedures established by state or (where applicable) foreign law or a company's governing documents, companies may not opt-out of these requirements by adopting more restrictive procedures or choosing not to comply with the SEC's requirements. The final rules also narrow the current election exclusion under Rule 14a-8(i)(8) so as to facilitate shareholder proposals relating to proxy access.

The final rules will be effective 60 days after their publication in the Federal Register, meaning that proxy access will apply to the next annual shareholders meeting for companies for which the prescribed notice window for shareholders to submit nominees for inclusion in the companies' proxy materials is open after the effective date. For example, if the rules are published on September 3, 2010, and therefore effective on November 2, 2010, they will apply to companies that had a 2010 proxy mailing date of no earlier than March 2, 2010.

Smaller reporting companies will not have to comply with these requirements for three years. Voluntary filers and controlled companies will be subject to the new proxy access rules, but companies that are subject to the SEC's proxy rules solely because they have a class of debt securities registered under Section 12 of the Exchange Act and foreign private issuers will not be subject to the new rules.

### **New Proxy Access Procedures**

#### ***Eligibility Requirements for Nominating Shareholders***

New Rule 14a-11 allows a shareholder or group of shareholders to nominate directors using a company's proxy materials if the shareholder or group:

- holds at least 3% of the total voting power of the company's securities that are entitled to vote on the election of directors at the annual meeting and
- has held such securities continuously for a period of three years prior to the date a notice of nomination on new Schedule 14N is filed with the SEC and transmitted to the company (and continues to hold at least that amount of securities through the date of the relevant annual meeting).

The rule does not apply to a company if applicable state law or, in the case of foreign companies that do not qualify as foreign private issuers, foreign law or the company's governing documents prohibit shareholders from nominating candidates for election as a director.

Importantly, shareholders using Rule 14a-11 must not be holding any of the company's securities with the purpose or effect of changing control of the company or to gain a number of board seats that exceeds the maximum number allowable under Rule 14a-11. If any nominating shareholder is or becomes a member of a Section 13(d) "group" with persons engaged in soliciting or other nominating activities in connection with the subject election of directors, conducts a separate solicitation with respect to the shareholders' nominees or participates in another person's election of directors outside of the SEC's proxy access procedures, then such nominating shareholder would be ineligible to use new Rule 14a-11. Shareholders seeking a change-in-control or a majority of board seats or greater may continue to use existing SEC procedures for such election contests.

Nominating shareholders may not participate in more than one Rule 14a-11 nomination process or group at a time.

***Three percent voting power threshold.*** In calculating the 3% voting power threshold, the total voting power of the company's securities (*i.e.*, the denominator in the threshold calculation) would include the aggregate number of votes derived from all classes of company securities regardless of whether they are registered under Section 12 of the Exchange Act or not. Nominating shareholders may rely on information from the company's most recent SEC filings to calculate total voting power, unless the shareholders know or have reason to know that such information is inaccurate.

In a departure from the established definition of "beneficial ownership" under existing SEC rules, Rule 14a-11 specifies that the total voting power "held" by a shareholder (*i.e.*, the numerator of the threshold calculation) includes only those shares for which the shareholder directly or indirectly holds both voting power (*i.e.*, the power to vote or direct the voting of such shares) and investment power (*i.e.*, the power to dispose or direct the disposition of such shares). The adopting release notes that voting and investment power does not exist over securities that a nominating shareholder merely has the right to acquire, such as securities underlying options that are currently exercisable but have not yet been exercised. Votes attributable to securities that have been loaned by or on behalf of a nominating shareholder would be included if the nominating shareholder has the right to recall the loaned securities and will recall those shares upon being notified of the company's intent to include the shareholder's nominees in the company's proxy materials. Votes attributable to securities that the nominating shareholder borrowed for purposes other than a short sale or sold in a short sale that is not closed out must be excluded (unless, in the case of short sales, the nominating shareholders had no control over such transactions). In calculating total voting power held by the nominating shareholder, only Exchange Act-registered securities should be considered, except with respect to the exclusion for shorted or borrowed stock, which looks to all securities of the company entitled to vote on the election of directors regardless of whether such securities are registered. Securities intermediaries would not be considered to have voting or investment power over securities held by or on behalf of another person,

notwithstanding the fact that they may vote or direct the voting of those securities without instruction.

If a company has different classes of securities entitled to vote on the election of directors, but that do not do so together, the calculation of both the numerator and denominator discussed above will be determined only on the basis of the voting power of the class of securities that would be voting together on the election of the persons sought to be nominated.

***Three-year and other holding period requirements.*** The minimum amount of shares used to satisfy the 3% voting power requirement discussed above must have been held by the nominating shareholders continuously for at least three years as of the date that they provide notice to the SEC and the company of the nomination; and the nominating shareholders must continue to hold such shares through the date of the subject election of directors. Nominating shareholders must only show that they have owned the minimum amount of shares used to satisfy the 3% voting power threshold for the requisite holding period, not that they satisfied the 3% voting power requirement throughout the holding period. Holding period calculations are subject to the same guidance discussed above with respect to the inclusion of loaned securities and the exclusion of shorted or borrowed securities. In addition, the amount of securities will be adjusted for stock splits, reclassifications or other similar adjustments by the company during the holding period. While nominating shareholders must disclose their intent with respect to continued ownership of their shares after the election (which may be contingent on the results of the election of directors), Rule 14a-11 does not include a holding requirement past the date of the shareholder nominees' election to the board.

***Proof of ownership.*** Nominating shareholders must provide written proof of ownership of the necessary amount of securities to satisfy the above voting power and holding period requirements. If nominating shareholders are not registered holders of the securities, they must provide proof of ownership in the form of one or more written statements from the registered holders of the nominating shareholder's securities (or the brokers or banks through which those securities are held) verifying that, as of a date within seven calendar days before the notice of nomination on Schedule 14N is filed with the SEC and transmitted to the company, the nominating shareholders met the 3% voting power and three-year holding requirements. If a nominating shareholder holds such shares through a broker or bank that is a participant in the Depository Trust Company or other clearing agency acting as a securities depository, then a statement regarding such ownership from such broker or bank will satisfy these requirements. If the bank is not such a participant, then the nominating shareholder must provide a separate written statement in the form set forth in Item 4 of Schedule 14N. These ownership statements must be attached as an appendix to Schedule 14N. If nominating shareholders have filed a Schedule 13D or 13G or Form 3, 4 or 5 reflecting ownership of the securities as of or before the date that begins the three-year holding period, they may attach the filing to, or incorporate the filing by reference in, the Schedule 14N.

***Formation of nominating shareholder group.*** As noted above, Rule 14a-11 allows shareholders to aggregate their shares to meet the voting power and holding period requirements. Amendments to Rule 14a-2 exempt solicitations by shareholders in

connection with the formation of a nominating shareholder group from the SEC's proxy solicitation requirements so long as the soliciting shareholders are not holding company securities with the purpose or effect of changing control of the company or to gain a number of board seats that exceeds the maximum number allowable under Rule 14a-11. Soliciting shareholders lose this exemption if they subsequently engage in soliciting or nominating activities outside Rule 14a-11 or become a member of a Section 13(d) group with other persons engaged in such activities.

Each written communication regarding the formation of a Rule 14a-11 nominating shareholder group must include no more than the following information:

- a statement of each soliciting shareholders' intent to form a nominating shareholder group to nominate a director under Rule 14a-11;
- identification of, and a brief statement regarding, the potential nominees or, where no nominees have been identified, the characteristics of the nominees that the shareholders intend to nominate;
- the percentage of voting power that the soliciting shareholders hold; and
- the means by which shareholders may contact the soliciting shareholders.

Any written soliciting material must be filed with the SEC under cover of Schedule 14N by the soliciting shareholders no later than the date that the material is first published, sent or given to shareholders, with copies to the applicable stock exchange and the company. While the content of oral solicitations are not regulated in the same manner as written communications, notice of the commencement of oral solicitation must be filed under cover of Schedule 14N on the first date of such communications.

Shareholders may also rely on any other exemptions to the solicitation rules for their solicitations with respect to the formation of a Rule 14a-11 nominating shareholder group (e.g., the Rule 14a-2(b)(2) exemption for solicitations of no more than 10 persons).

#### ***Eligibility Requirements for Shareholder Nominees***

Shareholder nominees must meet the following qualifications:

- their candidacy and board membership, if elected, must not violate federal, state or foreign law or applicable stock exchange rules (other than director independence rules) in a manner that cannot be cured before the company notifies the nominating shareholder of its intent to exclude such nominee because of the violation;
- they must satisfy the objective criteria for independence that is generally applicable to the company's directors as set forth by applicable stock exchange rules. Shareholder nominees do not have to meet any heightened standard of independence applicable to audit committee members. Shareholder nominees also do not have to meet any heightened independence standards that have

been adopted by the company or any independence standards that require a subjective determination by the board; and

- there must be no relationship or agreement between the nominees or any nominating shareholder and the company regarding the nomination of the nominees. However, the final rules clarify that unsuccessful negotiations between the nominees or nominating shareholders and the company's nominating committee or board to have the nominees included in the company's proxy materials as management nominees or negotiations that are limited to whether the company must include the nominees in the company's proxy materials would not be considered an agreement for this purpose. There are no restrictions on the relationships between the nominating shareholders and their nominees.

***Advance Notice Requirements; New Schedule 14N***

Nominating shareholders must provide advance notice on new Schedule 14N to the company of their intent to require the inclusion of their nominees in the company's proxy materials. The Schedule 14N must be mailed by registered or certified mail or electronically transmitted to the company no earlier than 150 calendar days and no later than 120 calendar days before the anniversary of the date that the company mailed its proxy materials for the prior year's annual meeting. The 120-day deadline must be disclosed in the company's prior-year proxy materials. If the company did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year, the company must set a deadline for the submission of the Schedule 14N that is a reasonable time before the company mails its proxy materials and disclose that deadline under new Item 5.08 of Form 8-K within four business days after its determination by the company.

Nominating shareholders must also file the Schedule 14N with the SEC on the date that it is sent to the company and update the schedule for any material changes, which would include the withdrawal of a nominating shareholder or nominee and the reasons for such withdrawal. Nominating shareholders are also required to file a final amendment to the Schedule 14N within 10 calendar days announcing the final results of the election and stating their intention with regard to continued ownership of their shares.

Nominating shareholders may file one joint Schedule 14N provided that the statement identifies and includes the required information with respect to all such persons, indicates that the statement is filed on behalf of all such persons and includes as an appendix their agreement in writing that the statement is filed on each of their behalf. Each nominating shareholder filing a joint Schedule 14N is responsible for the timely filing of that statement and related amendments and for the completeness and accuracy of the information concerning that person contained in the schedule.

Schedule 14N requires, among other things, certifications that the nominating shareholders and nominees meet the eligibility requirements discussed above, information similar to that currently required for election contests under SEC rules, information regarding certain relationships (such as agreements or litigation) between the

nominating shareholders or nominees and the company or its affiliates and as to whether any nominating shareholder has been involved in certain legal proceedings during the past 10 years and the nominating shareholders' statement in support of their nominees (which is not to exceed 500 words per nominee). For more detail on the disclosure required by Schedule 14N, see Exhibit A.

### ***Company Requirements***

If the nominating shareholders and shareholder nominees meet the foregoing requirements, a company must include the nominees on its proxy card and make certain related disclosures in its proxy statement, unless state law or foreign law or the company's governing documents prohibit shareholders from nominating candidates for election to the board. The option of voting for or withholding votes for nominees as a group will not be available if shareholder nominees are included on the company proxy card, and shareholders must instead vote for each nominee separately. However, the company can continue to solicit discretionary authority to vote shareholders' shares for the company's nominees and to cumulate votes for the company nominees in accordance with applicable state law or the company's governing documents.

Notwithstanding the inclusion of the shareholder nominees in the company's proxy materials, nominating shareholders can continue to use written materials outside of the company proxy statement to seek support for their Rule 14a-11 nominees or to oppose the company's nominees. Each written communication must:

- identify each nominating shareholder and describe his or her direct or indirect interests, by security holdings or otherwise;
- include a prominent legend in clear, plain language advising shareholders that a shareholder nominee is or will be included in the company's proxy statement and that they should read that proxy statement because it includes important information. The legend also must explain to shareholders that they can find the proxy statement and other relevant materials at no charge on the SEC website; and
- be filed with the SEC under cover of Schedule 14N by the soliciting shareholders no later than the date the material is first published, sent or given to shareholders, with copies being sent to the applicable stock exchange and the company. There are no filing requirements with respect to oral communications by the soliciting shareholders.

Similar to the amendments to Rule 14a-2 to exempt solicitations by shareholders regarding the formation of a Rule 14a-11 nominating shareholder group, amendments to Rule 14a-2 exempt solicitations with respect to shareholder nominees so long as shareholders do not seek proxy power or otherwise request a form of revocation, abstention, consent or authorization. This exemption applies only after the nominating shareholders have been notified by the company that their nominees will be included in the company's proxy materials. Nominating shareholders may not rely on any other exemptions from the proxy rules for their solicitation activities with respect to their director

nominees, and this exemption is not be available if the shareholders subsequently engage in soliciting or other nominating activities outside Rule 14a-11 or become members of a Section 13(d) group with other persons engaged in such activities.

***Limitations on the number of shareholder nominees.*** In keeping with the SEC's goal of preventing the proxy access procedure from being too disruptive or otherwise being used to effect changes in control, a company is only required to include the greater of one shareholder nominee or a number of nominees equal to 25% of its board membership (rounded down if such 25% number is not a whole number). The final rules clarify the calculation of this allotment of shareholder nominees as follows:

- Directors who were previously elected pursuant to Rule 14a-11 but otherwise not up for election (e.g., in a staggered board) will count towards this allotment.
- If a shareholder has provided a notice of nomination on Schedule 14N and the company subsequently decides to include the subject shareholder nominees in its proxy materials as an unopposed company nominee, those nominees will count towards this allotment.
- Directors who are included in a company's proxy materials or otherwise elected to the board pursuant to an agreement between the nominees or nominating shareholders and the company or any affiliate of the company (except for circumstances covered by the previous bullet) will not be included in this allotment. Unsuccessful negotiations between the nominees or nominating shareholders and the company's nominating committee or board to have the nominees included in the company's proxy materials as management nominees or negotiations that are limited to whether the company must include the nominees in the company's proxy materials will not be considered an agreement for the purposes of this requirement.
- Where the company has multiple classes of securities and each class is entitled to elect a specified number of directors, the company will be required to include the lesser of the number of nominees that the nominating shareholders' class is entitled to elect or 25% of the board, but in no case less than one nominee.
- Previous Rule 14a-11 nominees who are elected to the board and then renominated by the board on its slate will not count towards this allotment.

Shareholder nominations will be accepted, not on a "first-come, first-served" basis as had been proposed, but rather starting with the nominees of the nominating shareholders with the highest qualifying voting power percentage as disclosed on the date of the filing of the Schedule 14N and continuing with the next largest shareholder until the maximum allotment of shareholder nominees is reached. For companies with multiple classes of stock where each class is entitled to elect a set number of directors, priority will be determined based on the proportion of total voting power attributable to each class, rounding to the closest whole number. Shareholders submitting a number of nominees greater than that permitted by Rule 14a-11 will be permitted to choose which of their shareholder nominees continue in the process. If a nominating shareholder or

shareholder nominee withdraws or is disqualified, the company must continue to add new qualifying shareholder nominees up to its maximum allotment until the commencement of the printing of its proxy materials.

***Including shareholder nominees.*** If a company determines to include one or more shareholder nominees in its proxy materials pursuant to Rule 14a-11, it must so notify the nominating shareholders no later than 30 calendar days (as indicated by postmark or electronic transmission) before the company files its definitive proxy materials with the SEC. The company must then include the nominees' names on its proxy card and certain disclosure related to the nominating shareholders and nominees in its proxy statement pursuant to new Item 7(e) of Schedule 14A (See Exhibit A). The company will not be responsible for any information provided by the nominating shareholders and included in its proxy materials regardless of whether the company has reason to know that such information is inaccurate. Further, Rule 14a-9 is amended to impose upon the nominating shareholders liability for false or misleading information that they include in the Schedule 14N and any related communication or that they otherwise cause to be included in a company's proxy materials. No nominating shareholder information will be deemed incorporated by reference into any of the company's filings, unless the company so specifies. Companies may continue to file their proxy materials with the SEC in definitive form on the same basis as they currently do, notwithstanding the inclusion of shareholder nominees.

We note that one practical effect of including Rule 14a-11 nominees in the proxy statement is that many companies' majority voting standards will be rendered inoperative. Most majority voting standards would revert back to a plurality vote standard if there is a "contested election", typically defined as an election where there are more director nominees than open seats.

***Excluding shareholder nominees or a statement of support.*** If a company determines that it may exclude (i) a shareholder nominee because Rule 14a-11 is not applicable, the nominating shareholders or nominees fail to satisfy their eligibility requirements or including the nominee would result in the company exceeding the maximum number of nominees it is required to include in its proxy statement or (ii) a statement in support of a nominee because it exceeds the 500 word limit, the final rules provide a process for the company and the nominating shareholders to resolve the issue, with related deadlines, as set forth on Exhibit B. Companies may not exclude a nominee because any required representation or certification by the nominating shareholders was materially false or misleading and can only address these concerns through proxy disclosure. The composition of the nominating shareholder group and the shareholder nominees may not be changed to correct a deficiency. This effectively means that the only curable deficiencies relate to the addition of information missing from, and the correction of false or misleading information in, the Schedule 14N, and amending the number of shareholder nominees so that it does not exceed the number permitted by Rule 14a-11. The burden is on the company to demonstrate that it may exclude a nominee or statement of support.



***Other Related Changes***

Rule 13d-1 is amended so that a beneficial owner will not lose Schedule 13G eligibility solely as a result of activities in connection with a nomination under Rule 14a-11; however, this exception expires after the related director election. Schedule 13G is also amended to add a certification that to the best knowledge and belief of the filer that the subject securities are not held with the purpose or effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect other than solely in connection with a nomination under Rule 14a-11. Because the SEC could not anticipate all of the proxy access procedures that might be adopted under state law or foreign law or by companies outside Rule 14a-11 and determine whether this relief would be appropriate to such potentially diverse procedures, this exemption is not available for shareholder nominations made pursuant to state law or foreign law or a company's governing documents.

The final rules do not include the proposed safe harbor for a nominating shareholder to avoid affiliate status with respect to the company solely as a result of nominating a candidate for director or soliciting for the election of such nominee or against a company nominee pursuant to Rule 14a-11. Thus, the traditional facts-and-circumstances analysis of affiliate status will apply to nominating shareholders.

**Shareholder Nominations Made Pursuant to Proxy Access Procedures Established Under State or Foreign Law or a Company's Governing Documents**

The final rules establish certain procedural and disclosure requirements with respect to the inclusion in company proxy materials of shareholder nominations made pursuant to a process specified either by state law or foreign law or by the company's governing documents. Under new Rule 14a-18, nominating shareholders must provide notice to the company on Schedule 14N by the same deadlines as required pursuant to Rule 14a-11; however, less information is required on Schedule 14N and subsequently under new Item 7(f) of Schedule 14A than pursuant to the Rule 14a-11 proxy access procedure because not all of the Rule 14a-11 required disclosures will be applicable to the state, foreign or company procedures. For more detail on the disclosures required for these shareholder nominations, see Exhibit A. As with the Rule 14a-11 procedure, companies are not liable for information provided by nominating shareholders. Such information will also not be deemed incorporated by reference into any of the company's filings, unless the company specifies otherwise.

**Shareholder Proposals Related to Proxy Access Procedures**

As a corollary to the proxy access procedures discussed above, the final rules narrow the Rule 14a-8(i)(8) election exclusion to permit the inclusion of shareholder proposals to amend a company's governing documents to provide for proxy access, if such proposals are not otherwise excludable under Rule 14a-8. Rule 14a-8(i)(8) is amended to allow the exclusion of only those shareholder proposals that:

- would disqualify a nominee who is standing for election;

- would remove a director from office before his or her term expired;
- questions the competence, business judgment or character of one or more nominees or directors;
- seeks to include a specific individual in the company's proxy materials for election to the board; or
- otherwise could affect the outcome of the upcoming election of directors.

This provision does not restrict the types of proxy access amendments that a shareholder can propose. However, the proposing release notes that any shareholder proposals that seek the adoption of proxy access procedures that are more restrictive than Rule 14a-11 will be excludable.

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The new proxy access rules come on the heels of a relatively quiet 2010 proxy season, and it remains to be seen whether they will have a significant impact on the 2011 proxy season. The various voting power, holding period and process requirements as well as the requirement that shareholders not use Rule 14a-11 with a change-of-control intent will largely eliminate the use of this process by many of the most active investors, such as hedge funds. However, it has been reported that other institutional investors have been actively preparing to use proxy access, including establishing databases of possible Rule 14a-11 director candidates.

To the extent proxy access is used, it seems clear that the most likely corporate targets will be those that suffer from long term or systemic failures to meet shareholder demands, whether on corporate governance issues or broader issues of shareholder value. Thus, as we advised last proxy season in the face of new proxy disclosure requirements, the elimination of broker discretionary voting in director elections and the adoption of majority voting in director elections by a significant portion of public companies, it is important that companies focus their efforts on shaping and communicating their strategies to shareholders well in advance of a "proxy access event."

We note that in addition to these proxy access changes, further changes will likely apply to the 2011 proxy season as a result of the enactment of the Dodd-Frank Act, including the advent of mandatory say-on-pay for U.S. companies. In light of these changes, companies should begin to evaluate their corporate governance documents and proxy vetting and filing procedures and timing to account for these new requirements.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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**SUMMARY OF KEY DISCLOSURE ITEMS REQUIRED  
BY NEW SCHEDULE 14N AND AMENDED SCHEDULE 14A**

Disclosure Item	Shareholder Nominations Pursuant to Rule 14a-11		Shareholder Nominations under State, Foreign or Company Procedures pursuant to Rule 14a-18	
	Shareholder Notice on Schedule 14N	Company Proxy Statement on Schedule 14A (New Item 7(e))	Shareholder Notice on Schedule 14N	Company Proxy Statement on Schedule 14A (New Item 7(f))
A statement of ownership from the nominating shareholders if they are the registered holders of the shares qualifying them for use of Rule 14a-11, or otherwise, one or more written statements from the persons (e.g., brokers or banks) through which the nominating shareholders' shares are held, verifying that, within seven calendar days before the filing of the Schedule 14N with the SEC and transmission of the notice to the company, the nominating shareholders continuously held for three years the amount of securities used to satisfy Rule 14a-11's 3% voting power threshold.	Required.	Not required.	Not required.	Not required.
A statement that the nominating shareholders intend to hold the amount of securities used to satisfy Rule 14a-11's 3% voting power threshold through the date of the meeting of shareholders, and a statement regarding the nominating shareholders' intent with respect to continued ownership after the election	Required.	Not required.	Not required.	Not required.
Consent of each shareholder nominee to be named in the company's proxy materials and, if elected, to serve on the	Required.	Required.	Required.	Required.

company's board				
Disclosure about the nominee as would be required for contested elections by Items 4(b) (Information regarding persons making the solicitation), 5(b) (Information regarding the interests of participants and other persons in the matters to be acted on), 7(a), (b) and (c) (Information regarding the background and qualifications of the shareholder nominee and certain relationships between the shareholder nominee and the company as required by Instruction 4 of Item 103 and Items 401, 404(a) and (b), 405 and 407(a), (d)(4), (d)(5) and (h) of Regulation S-K) of Schedule 14A)	Required.	Required.	Required.	Required.
Disclosure about the nominating shareholders as would be required in contested elections by Items 4(b) and 5(b) of Schedule 14A <sup>1</sup>	Required.	Required.	Required.	Required.
Disclosure about whether the nominating shareholders have been involved in any legal proceeding during the past 10 years, as specified in Item 401(f) of Regulation S-K unless this disclosure has already been provided in response to Items 4(b) and 5(b) of Schedule 14A referenced above <sup>1</sup>	Required.	Required.	Required.	Required.
Disclosure about whether, to the best knowledge of the nominating shareholders, the nominee meets the director qualifications set forth in the company's governing documents	Required.	Required.	Not required.	Not required.
A statement that, to the best knowledge of the nominating shareholders, the nominees meet the objective criteria for independence of the applicable stock exchange	Required.	Required.	Not required.	Not required.
Information regarding the nature and extent of the relationships between the nominating shareholders and the nominees and the company or any affiliate of the company,	Required.	Required.	Required.	Required.

<p>including:</p> <ul style="list-style-type: none"> <li>• Any direct or indirect material interest in any contract or agreement between a nominating shareholder or nominee and the company or its affiliates (including any employment, collective bargaining or consulting agreement);</li> <li>• Any material pending or threatened litigation in which a nominating shareholder or nominee is a party or a material participant, involving the company or any of its officers, directors or affiliates; and</li> <li>• Any other material relationship between a nominating shareholder or the nominee and the company or any affiliate of the company not otherwise disclosed, including employment relationships and consulting arrangements]</li> </ul>				
The website address on which the nominating shareholders may publish soliciting materials, if any	Required.	Required.	Required.	Required.
Any statements in support of the shareholder nominees, which may not exceed 500 words per nominee. If the statement exceeds the 500 word limit, the statement, but not the nominee, may be excluded from the company's proxy materials	Required.	Required.	Not required.	Not required.
The date of dissolution of a nominating shareholder group or termination of a shareholder nomination	Required.	Not required.	Not required.	Not required.
<p>A certification that, after reasonable inquiry and to the best of the nominating shareholders' knowledge:</p> <ul style="list-style-type: none"> <li>• The nominating shareholders are not holding any of the company's securities with the purpose or effect of changing control of the registrant or to gain a number of board seats that exceeds the maximum allowable</li> </ul>	Required.	Not required.	Not required.	Not required.

under Rule 14a-11; and <ul style="list-style-type: none"> <li>The nominating shareholders and nominees satisfy the eligibility conditions of Rule 14a-11</li> </ul>				
A certification that, after reasonable inquiry and to the best of the nominating shareholders' knowledge, the information set forth in the Schedule 14N is true, complete and correct	Required.	Not required.	Required.	Not required.

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<sup>1</sup> Where the nominating shareholder is a general or limited partnership, syndicate or other group, this information must be given with respect to each partner of the general partnership; each partner who is, or functions as, a general partner of the limited partnership; each member of the syndicate or group and each person controlling the partner or member. If the nominating shareholder is a corporation or if a person referred to in the foregoing sentence is a corporation, this information must be given with respect to each executive officer and director of the corporation; each person controlling the corporation and each executive officer and director of any corporation or other person ultimately in control of the corporation.

## SEC PROXY ACCESS REVIEW PROCESS

Deadline	Action
Within 14 calendar days after the date that is 120 calendar days before the anniversary of the date that the company mailed its proxy materials for the prior year's annual meeting	The company must notify the nominating shareholders of its decision to exclude a nominee or a statement in support and an explanation of the company's basis for such determination.
Within 14 calendar days after receipt of the company's notice of exclusion	The nominating shareholders must respond and correct any deficiencies identified in the company's notice, if they wish to continue in the Rule 14a-11 process.
No later than 80 calendar days before the filing of definitive proxy materials with the SEC, unless the company shows good cause for missing this deadline	<p>If the company still determines to exclude a shareholder nominee or statement in support, the company must provide notice of the basis for its determination to the SEC and a copy of such notice to the nominating shareholders. This notice must include an explanation of the company's basis for excluding the nominees or statement in support; and a supporting opinion of counsel when the basis for exclusion relies on a matter of state or foreign law.</p> <p>At the time of the filing of this notice, the company may seek no-action relief from SEC staff with regard to its determination and provide the nominating shareholders with a copy of such request. The company must also provide the shareholders with a copy of the staff's response promptly following receipt.</p>
Within 14 calendar days after the company's notice to the SEC	The nominating shareholders may submit a response to the company's notice of exclusion to the SEC with a copy to the company.