



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

August 5, 2011

The Honorable Scott Garrett  
U.S. House of Representatives  
2244 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Garrett:

This responds to your July 28, 2011 letter requesting information about the Commission's recent proxy access rulemaking and ensuing litigation concerning the proxy access rule.

The Commission has considered the issue of proxy access for many years, including under the leadership of my immediate predecessors, William Donaldson and Christopher Cox.

The nation and the markets recently experienced one of the most serious economic crises of the past century. The crisis led many to raise serious questions and concerns about the accountability and responsiveness of some companies and boards of directors to the interests of shareholders. Practices that emphasized short-term results over long-term growth and compensation packages unsupported by financial performance harmed numerous companies and contributed to a loss of wealth for millions of American investors, altering their plans for retirement, their children's education and their economic well-being. These practices raised concerns about whether boards are exercising appropriate oversight of management, whether boards are appropriately focused on shareholder interests, and whether boards need to be more accountable for their decisions regarding such issues as compensation structures and risk management.

I believe an effective means of providing accountability — in a way that is both cost-effective and timely — is to ensure that shareholders, the true owners of the company, have a meaningful opportunity to effectuate the rights that they already have under state law to nominate directors.

In June 2009, the Commission proposed new Exchange Act Rule 14a-11, which would have required a company, under certain circumstances, to include in its proxy materials director nominees submitted by eligible shareholders. The Commission also proposed changes to certain other rules, including Exchange Act Rule 14a-8, the shareholder proposal rule. Shortly thereafter, the rule proposal was published for public comment in the Federal Register on June 18, 2009. The initial comment period closed on August 17, 2009; however, the Commission reopened the comment period on December 18, 2009, to provide interested parties an additional opportunity to comment on the data and related analyses included in the public comment file. In

total, the Commission received and reviewed approximately 600 comment letters on the proposal and met with many interested members of the public. After consideration of all comments and significant modifications to the initial rule proposal, on August 25, 2010, the Commission adopted final proxy access rules. On September 29, 2010, the Business Roundtable and Chamber of Commerce filed a petition for review of the final proxy access rule and, on October 4, 2010, the Commission stayed Rule 14a-11 and the related rule changes pending resolution of the litigation. In addition, to avoid potential confusion, the Commission also stayed the amendment to Rule 14a-8 that was adopted at the same time. On July 22, 2011, the D.C. Circuit Court of Appeals vacated Rule 14a-11.

In your letter, you requested information about the total number of SEC staff labor hours dedicated to the proxy access rulemaking process and the ensuing litigation and the total staff labor cost amount associated with each. You also requested information, if applicable, about any funds expended on outside counsel related to the proxy access rulemaking and ensuing litigation.

With regard to your request, please note that Commission staff do not track and record their time by specific project, and, as a result, this information cannot be compiled from existing records. Nonetheless, we have gathered information to provide you with a very basic estimate in an effort to be responsive to your request by your stated deadline.

To create the estimate for time spent by staff, we asked current staff who worked on the rulemaking to provide their best estimates of their time spent on the proxy access rulemaking and ensuing litigation. These staff estimates were based on individuals' present personal recollection of the approximate hours of their time spent on the rulemaking and/or ensuing litigation throughout the various stages of the rulemaking and litigation process since February 2009. Some of the staff who worked on the rulemaking project no longer work at the Commission and others are presently on leave, so estimates with regard to these individuals were based on information provided by available staff. While we attempted to be as comprehensive as possible in including staff who were involved in the rulemaking, it is possible that some of the estimates may be overstated or understated or that we may not have accounted for all staff that had smaller contributions in terms of time during the rulemaking and ensuing litigation. The estimates relate only to the most recent proxy access rulemaking, and do not reflect time spent in connection with any prior consideration or rulemaking concerning proxy access. In addition, these estimates do not include time spent by Commissioners and their staff on review and consideration of the proxy access rules and do not include time spent by Commission staff providing administrative support in connection with the rulemaking and ensuing litigation.

Subject to the limitations and exclusions described above, we estimate that approximately 21,000 staff hours were spent on the proxy access rulemaking at an estimated labor cost of approximately \$2.2 million spread over more than two years, and an additional approximately 2,700 staff hours were spent on the ensuing litigation at an estimated labor cost of approximately \$315,000. The labor cost reflects salary as well as other components of the Commission's labor cost, such as healthcare and other benefits.

We did not retain outside counsel during either the proxy access rulemaking or the ensuing litigation.

As you know, writing rules to effectuate free and fair markets is a time-consuming, resource-intensive effort for the SEC, as well as other regulators. Indeed, it is due to those efforts that today we have rules now in place such as those curtailing pay to play practices by investment advisers, imposing greater controls upon financial advisors who maintain custody of their customers' assets, strengthening the resilience of money market funds and bolstering our market structure, among others. The proxy access proposal was just one of more than 100 rulemakings the SEC has proposed or adopted over the past two years. In fact, the labor costs of the proxy access rule and subsequent litigation equaled approximately 0.1 percent of the Commission's appropriations during the corresponding time period.

Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if you have any further questions or if we can otherwise be of further assistance.

Sincerely,



Mary L. Schapiro  
Chairman