



Proxy Access: Initial Considerations for Public Companies

By Thompson Hine LLP, Public Company Group. Reprinted with permission.

On August 25, the SEC adopted final “proxy access” rules for the inclusion of director candidates nominated by shareholders in company proxy statements. The rules enable any shareholder or group of shareholders that has collectively owned at least 3 percent of a company’s voting stock for at least three years to include their board candidates in the company’s proxy statement and on the company’s proxy card. The rules also permit shareholders to submit proposals that add or enhance shareholder access provisions in a company’s bylaws for inclusion in a company’s proxy materials under Rule 14a-8.

The rules are expected to become effective in early November 2010. Below is an overview of issues that public companies should consider in preparing for the 2011 proxy season.

Delayed Effectiveness for Smaller Reporting Companies

Smaller reporting companies will have a three-year reprieve from new Rule 14a-11 (nominations by shareholders), but should immediately be prepared to ad-

dress Rule 14a-8 amendments (shareholder proxy access proposals).

Timing of Nominations

Under the new rules, shareholders must submit their director nominations for inclusion in a company’s proxy statement no earlier than 150 days, and no later than 120 days, prior to the anniversary of the mailing date of its prior year’s proxy materials. If this window closes before the new rules become effective, a company will not be required to accept shareholder nominations for the next proxy season. For many companies, however, this window period could be open soon—if not immediately—after the new rules become effective in November. Some companies will therefore need to be prepared to receive shareholder nominations as early as this November.

Minimum Director Qualifications

Nominating shareholders will be required to disclose in their

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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Tech Tip: Lexis Enhancements Coming in Early November

For more information, see <http://www.lexisnexis.com/lexisenhancements/> or ask a librarian.

Research Solutions

Find more of the information you need—in less time
With the newest *lexis.com*® enhancements

Soon, the *lexis.com*® service will have a new look and be even easier to use. It will be refreshed and more streamlined. More importantly, it will help you get to the information you need faster *and* get the most for your firm's legal research dollars. Some highlights of the upcoming enhancements:

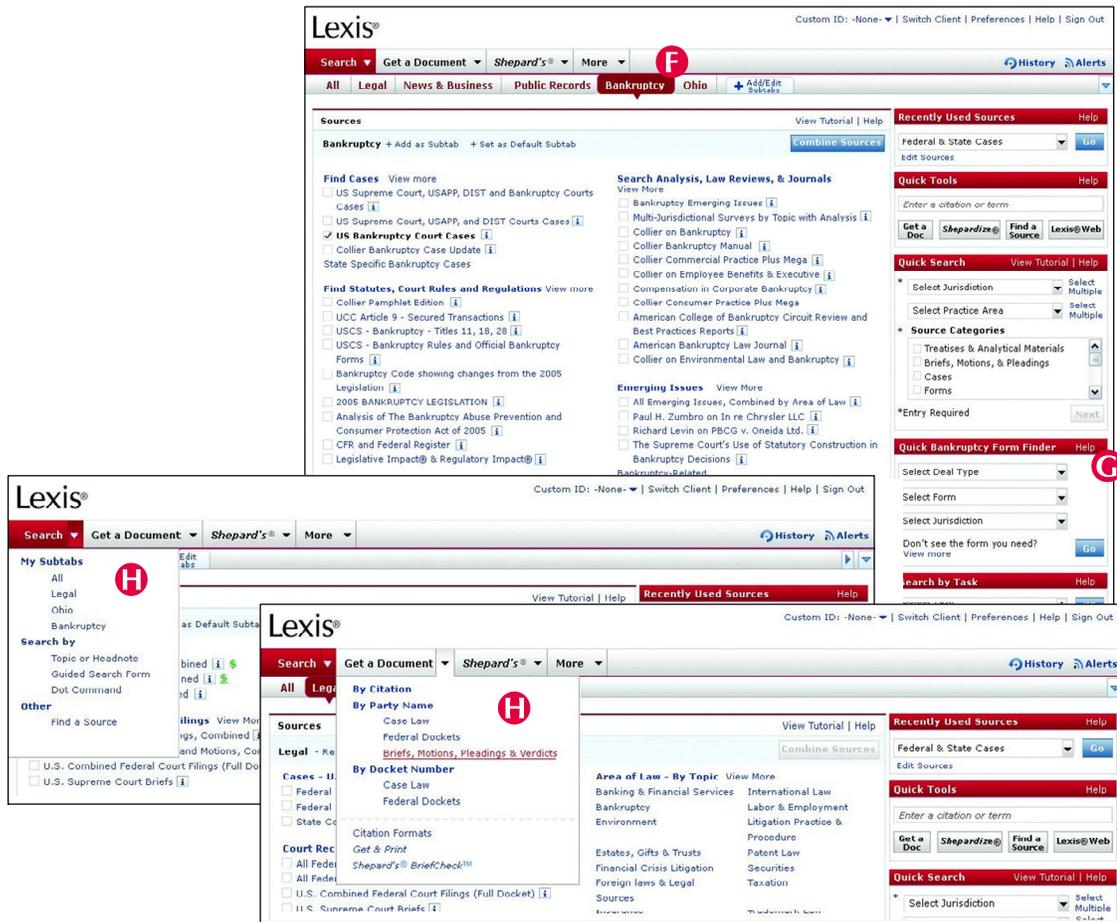
- A** **Fewer tabs** for a cleaner, more modern look and to help you get to the information you need with fewer clicks and in less time—note that former search sub-tabs appear at the top of the page.
- B** **A new “More” tab** provides easy access to related products and services such as Lexis® Transactional Advisor, LexisNexis® Total Litigator, Counsel Selector, LexisNexis® Dossier, and more.
- C** **Tools for activities** that researchers do most every day—Get a Document, *Shepardize*®, Find a Source, Recently Used Sources, Quick Search, etc.—will appear in easy-to-access locations on most pages.
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- E** **History and Alerts** will be accessible conveniently at the top-right corner of the screen.

The screenshot displays the Lexis.com homepage with several key features highlighted by red callout letters:

- A**: Points to the 'All' tab in the top navigation bar.
- B**: Points to the 'More' tab in the top navigation bar.
- C**: Points to the 'Quick Tools' section on the right side of the page.
- D**: Points to the 'Lexis Web' button in the 'Quick Tools' section.
- E**: Points to the 'History' and 'Alerts' icons in the top right corner.

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(Proxy Access, continued from page 1)

Schedule 14N whether their nominees meet the minimum director qualifications included in the company's articles or bylaws. Although the failure to satisfy the director qualification requirements will not be a basis for excluding a shareholder nominee, reference to a company's minimum director qualifications will be an important disclosure, particularly for a company opposing a director nomination. Companies should examine their governance guidelines, charters and nomination policies and consider expanding their director qualification requirements. Companies should also consider including their minimum director qualifications in a stand-alone document posted on their website. Companies may also want to evaluate whether their director qualification requirements should be included in their bylaws, which would require nominating shareholders to address these qualifications in their Schedule 14N filings.

Advance Notice Provisions— Timing Requirements

Companies should consider aligning the notice period in the advance notice provisions contained in their bylaws with the notice period under the proxy access rules. This will enable a company to consider all shareholder nominations, and have access to all relevant information, at the same time.

Advance Notice Provisions— Substantive Provisions

Companies should review and strengthen advance notice provisions in their bylaws, including updating these provisions to address all recent developments. Although the proxy access rules do not permit companies to impose any additional restrictions on shareholder nominations made under Rule 14a-11, advance notice provisions will apply to shareholder nominations made outside of Rule 14a-11 (e.g., in a proxy contest where

a shareholder mails out its own proxy materials). Companies should also revise their advance notice provisions to avoid conflicts with Rule 14a-11 (e.g., eliminating statements that the advance notice provisions provide the sole avenue for shareholders to nominate directors).

Board Vacancies

Companies should ensure that their boards do not have any vacant seats. If a director has recently resigned or a company otherwise has board vacancies, the board should immediately fill these vacancies or reduce the size of the board. An empty seat will be counted in calculating the 25 percent of a board's seats that may be filled by shareholders under the new rules. In addition, in soliciting shareholder support for board nominees, the board's case may often be stronger for an incumbent director than a new board nominee.

Investor Relations Changes

Companies should consider their investor relations activities and review their shareholder bases, and should consider reaching out to their largest shareholders before the new rules take effect. Note, however, that if a company commences discussions with a shareholder regarding including the shareholder's nominee in the company's proxy statement before the shareholder files a Schedule 14N, the shareholder's nominee cannot be counted against the limit of nominees who can be appointed by shareholders pursuant to the new rules.

New Proxy Statement Disclosure

All proxy statements will need to disclose the relevant dates for the submission of shareholder nominations of directors for inclusion in the company's proxy statement for the company's next annual meeting, as required by amended Rule 14a-4.

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*(Proxy Access, continued from page 4)***New Form 8-K Requirement**

Companies that intend to hold an annual meeting at a different time than last year should note the SEC's new Form 8-K requirement. If the date of the company's annual meeting is changed by more than 30 calendar days from the date of the prior year's meeting, the company must file a Form 8-K disclosing the date by which shareholders must submit director nominations for inclusion in the company's proxy materials, which must be at least a reasonable time before the mailing of the company's proxy materials. Companies should add this new Form 8-K filing requirement to their annual meeting checklists.

For More Information

If you have any questions, please contact

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or any other member of Thompson Hine's
Public Company group.

**What are we missing?**

Please contact the library director, Mary Jenkins, with any suggestions you have to improve our print and electronic resources. 513.946.5300 or mjenkins@cms.hamilton-co.org

Free CLEs in November

To register for any of these CLE events:
Contact Mary Ann at the law library or at
513.946.5300 or via email at

masweeney@cms.hamilton-co.org.

Lexis: Beyond the Basics

Tuesday, November 9

12:30 p.m.

Our Lexis trainer will offer a 1.0 credit (Ohio general) CLE on November 9. This is open to anyone interested in Lexis beyond the basics; the session will highlight content that the library offers via its Lexis license and will demonstrate advanced techniques and tools.

This Advanced Lexis CLE is free to HCLL current subscribers and \$35 for other registrants. It will take place in the Board Room.

Feel free to contact Mary Jenkins at 513.946.5300 or mjenkins@cms.hamilton-co.org in advance with any topics or features that you would like the trainer to address.

Westlaw

Wednesday, November 10

Two sessions:

12:30-1:30 p.m.

Westlaw Basics / Refresher

1:45-2:45 p.m.

Westlaw: A Focus on Jury Verdicts, Ohio & KY Practice, and Other Analytical Materials

Please bring your questions to the session or contact the Library in advance.

Introducing Laura Dixon-Caldwell: Our New Reference Librarian

It is our pleasure to announce the hire of our new Reference Librarian, Laura Dixon-Caldwell. Laura will start on November 1st. Her duties will include providing research guidance for our patrons, coordinating the Library's CLEs and other training events, editing the newsletter, and producing the practice area email updates.

Laura's previous positions include Reference Librarian at Keating, Muething & Klekamp, Adult Services Librarian in the Campbell County Public Library system, and Reference Librarian at the Erlanger branch of the Kenton County Public Library. She earned her B.A. at Xavier and her M.L.S. at the University of Kentucky. She brings excellent experience to this position. Please introduce yourself to Laura on your next visit to the Law Library.

Subscriber benefits

Are you familiar with the many benefits included in your library subscription? By joining the Hamilton County Law Library, you can:

Access: to databases, including **LexisNexis, Shepards', CCH, Hein Online**, and over 70 **Aspen /LOISLaw** treatises in 16 substantive areas

Connect: to the wireless network throughout the Law Library, videoconferencing capabilities, and 5 conference rooms, equipped with speaker phones, are available to our subscribers

Learn: Free CLE opportunities offered throughout the year: Visit our Law Library Subscriber Services page to find out more.

<http://www.hamilton-co.org/cinlawlib/services.html>

Introduce a colleague to the Law Library!

You & the Legal System: Your Rights in the Workplace

As a public service, the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service, will present *You and the Legal System: Your Rights in the Workplace* on Friday, November 19, 2010 at 12:00 noon at the Hamilton County Law Library. This program is free and open to the public. Attorneys are welcome to attend but please note that the session is intended primarily for the non-lawyer citizen. It will last one hour. Please pass the information along to clients and colleagues as desired.

We're pleased to announce that Kelly Mulloy Myers, an attorney with Freking & Betz in Cincinnati, will be our speaker. Ms. Myers specializes in labor and employment law. She will address common issues related to employee rights. There will be time for questions from the audience.

Please call 513.946.5300 at the Hamilton County Law Library or email masweeney@cms.hamilton-co.org to reserve a seat.

Public Announcement

The Hamilton County Law Library Resources Board announces its 2011 meeting schedule. All meetings will be held at 1:00 p.m. in the Law Library's Board Room. Members of the public are welcome to attend. Minutes are posted on the web at <http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

January 6, 2011

April 7, 2011

July 7, 2011

October 6, 2011

Employment Law Resources

We suggest the following print and online resources for your employment law research. Ask a librarian for additional guidance.

Take a look at the full-text treatises we offer through Aspen/Loislaw and large collections on employment law through BNA and CCH.

50 employment laws in 50 states / Employers Counsel Network.

KF3320.Z99 E56 2010 Ed.

Age, sex and disability discrimination in employee benefit plans / by William J. Flanagan.

KF6289.A1 T35 no. 363-4th

Collective bargaining negotiations and contracts / BNA

Online, in the Computer Lab

Create your own employee handbook : a legal and practical guide / by Lisa Guerin & Amy DelPo.

KF3455 .G84 2007

Deskbook encyclopedia of employment law.

KF3314 .D47 2010

Employee discharge and documentation [in Ohio] / presented by Rebecca J. Bennett, Joel R. Hlavaty, and Stephen S. Zashin.

Ohio CLE KFO334.5.E55 D722 2007

The employer's legal handbook / by Fred S. Steingold ; edited by Alayna Schroeder.

KF3455 .S74 2009

Employment discrimination law / Barbara T. Lindemann, Paul Grossman ; editor-in-chief, C. Geoffrey Weirich ... [et al.].

KF3464 .L56 2007

Employment forms and policies / Maureen F. Moore.

KF3455.A65 M66 2009-

Employment litigation handbook / Cathy J. Beveridge, editor.

KF3464 .E46 2010

Employment status : employee v. independent contractor / by Helen E. Marmoll.

KF6289.A1 T35 no. 391-4th

Hiring and firing / by Frances Kulka Browne and Lauren Reiter Brody.

KF3457 .B76

Human resource law update / authors, Deborah DeLong ... [et al.].

Ohio CLE KFO331 .H86 2009

Smart policies for workplace technologies : email, blogs, cell phones & more / by Lisa Guerin.

HF5549.5.P39 G84 2009

Tax incentives to hire, retain, or compensate employees / by James Edward Maule.

KF6289.A1 T35 no. 514

Your rights in the workplace / by Barbara Kate Repa.

KF3455.Z9 R47 2007

Upcoming Events

November 9: Advanced Lexis CLE at 12:30 p.m. Free to subscribers!

November 10: Two free Westlaw CLE opportunities:

12:30-1:30: Westlaw Basics/Refresher (1.0 Ohio general CLE credit)

1:45-2:45: Westlaw: A Focus on Jury Verdicts, Ohio & KY Practice, and Other Analytical Resources

November 19: You and the Legal System: Employment: Your Rights in the Workplace

November Holidays

The Law Library will be closed:

Thursday, November 11 in observance of Veterans' Day

Thursday and Friday, November 25 and 26 in observation of Thanksgiving

November 2010 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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