

NO. 10-1305

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BUSINESS ROUNDTABLE AND CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Review of an Order of the Securities and Exchange Commission

JOINT MOTION FOR EXPEDITED CONSIDERATION

All of the parties, petitioner Business Roundtable, petitioner Chamber of Commerce of the United States of America (“Chamber of Commerce”), and respondent Securities and Exchange Commission, submit this Joint Motion for Expedited Consideration of the above-captioned judicial review proceeding. The Commission has stayed all of the rules that have been challenged in the petition pending this Court’s review, and the parties agree that the issue of the validity of the rules should be resolved on an expedited basis.

On August 25, 2010, the Commission adopted changes to its proxy rules and related rules.¹ The new rules require public companies, under certain circumstances, to include in their proxy materials director nominees (and related information) put forward by shareholders or groups of shareholders. The rule changes were published in the Federal Register on September 16, 2010, and were scheduled to become effective on November 15, 2010.

On September 29, 2010, Business Roundtable and the Chamber of Commerce filed a petition with this Court seeking judicial review of the changes to the Commission's proxy and related rules. On the same date, petitioners filed with the Commission a motion to stay the effect of newly adopted Rule 14a-11 and associated amendments to the Commission's rules pending review by this Court. Petitioners did not seek a stay of the amendment to existing Rule 14a-8 which the Commission adopted contemporaneously with new Rule 14a-11. Petitioners represented in their stay motion that, if the Commission were to grant a stay, they would join in a motion seeking expedited consideration of their petition in this Court.

¹ Facilitating Shareholder Director Nominations, Final Rule, 75 Fed. Reg. 56,668 (Sept. 16, 2010).

On October 4, 2010, the Commission granted petitioners' motion for a stay.² Without addressing the merits of petitioners' challenge to the rules, the Commission determined to exercise its discretion to stay Rule 14a-11 and related amendments to the Commission's rules, including the amendment to Rule 14a-8, pending resolution of the petition for review by this Court. The Commission explained that, among other things, a stay avoids potentially unnecessary costs, regulatory uncertainty, and disruption that could occur if the rules were to become effective during the pendency of a challenge to their validity. These were among the considerations cited by petitioners as well in asking that the rule be stayed. The Commission further explained that it was also staying Rule 14a-8 because it was designed to complement Rule 14a-11 and is intertwined, such that there is a potential for confusion if the amendment to Rule 14a-8 were to become effective while Rule 14a-11 was stayed. The Commission noted that, because the Commission and petitioners would be seeking expedited judicial review, the issue of the rules' validity will be resolved as quickly as possible.

Under 28 U.S.C. § 1657(a), "each court of the United States . . . shall

² In re Motion of Business Roundtable and the Chamber of Commerce of the United States of America, Order Granting Stay, Securities Act of 1933 Release No. 9149, Securities Exchange Act of 1934 Release No. 63031, Investment Company Act of 1940 Release No. 29456 (Oct. 4, 2010), available at <http://www.sec.gov/rules/other/2010/33-9149.pdf>.

expedite the consideration of [any action] if good cause therefor is shown.”

Accordingly, this Court will expedite its consideration of matters “in which the public generally, or in which persons not before the Court, have an unusual interest in prompt disposition.” D.C. Circuit Handbook of Practice and Internal Procedures, p. 34. The stay granted by the Commission pending review by this Court, even with that review being on an expedited basis, necessarily means that the Commission’s rule changes will not be available for use by shareholders during the 2010-2011 proxy season. Expedited review, however, will help ensure that outstanding uncertainty about the rules’ validity will be resolved before the 2011-2012 proxy season, providing clarity for public companies and their shareholders. The proxy access rules, and this proceeding, are of widespread public interest: the rules affect most U.S. public companies and their shareholders,³ and attracted extensive public comment both during the current rulemaking and in previous rulemakings conducted by the Commission to consider adoption of such access rules. The broad public interest in how the matter is resolved is reflected also in the prominence of the two organizations challenging

³ New Rule 14a-11 will apply to companies that are subject to the Exchange Act proxy rules, including investment companies registered under Section 8 of the Investment Company Act of 1940, except for companies that are subject to the proxy rules solely because they have a class of debt registered under Section 12 of the Exchange Act. See 75 Fed. Reg. 56,685-86 (2010).

the rules, which represent a large cross-section of American businesses, and in Congress's inclusion in the recently enacted Dodd-Frank legislation of a provision specifically addressing the Commission's authority to adopt proxy access rules.

The parties propose that the schedule below apply in this case. The parties have jointly negotiated and prepared the schedule to provide that they and any intervenors or *amici* brief the case as expeditiously as possible in light of the large size of the rulemaking record (approximately 600 comments were submitted), the number of legal issues petitioners expect to present, and the holidays in November and December, while also allowing the Court ample time to consider and decide the case.

Certified List	November 1, 2010
Petitioners' Opening Brief	November 30, 2010
Briefs of Any Intervenors or <i>Amici</i> in Support of Petitioners	December 9, 2010
Respondent's Brief	January 19, 2011
Briefs of Any Intervenors or <i>Amici</i> in Support of Respondent	January 27, 2011
Petitioners' Reply Brief	February 10, 2011
Deferred Appendix	February 18, 2011
Final Briefs	February 25, 2011

For the foregoing reasons and good cause shown, the parties request that consideration of this matter be expedited, that the Court issue an order setting the above briefing schedule, and that the Court direct the Clerk to schedule oral argument on the earliest available date following the completion of briefing.

Respectfully submitted,

s/ Michael L. Post

Jacob H. Stillman
Michael A. Conley
Randall W. Quinn
Michael L. Post
Tracey A. Hardin
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549
(202) 551-5198 (Quinn)

*Attorneys for Respondent Securities and
Exchange Commission*

s/ Eugene Scalia (with permission/MLP)

Eugene Scalia
Daniel J. Davis
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., NW
Washington, DC 20036
(202) 996-8500

*Attorneys for Petitioners Business
Roundtable and Chamber of Commerce of
the United States of America*

s/ Robin S. Conrad (with permission/MLP)

Robin S. Conrad

Amar D. Sarwal

National Chamber Litigation Center, Inc.

1615 H St., NW

Washington, DC 20062

(202) 463-5337

*Attorneys for Petitioner Chamber of
Commerce of the United States of
America*

October 8, 2010