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"E-Proxy" Rules Take Effect

Electronic Availability of Proxy Materials to Be Required

Rules will apply to all proxy and information statements for solicitations, except business combination transactions.

Issuers will be required to post all proxy materials on publicly accessible Web sites, even if materials are also delivered in paper.

The Securities and Exchange Commission (SEC) has recently finalized its so-called "e-proxy" rules, which will require all issuers to post their annual meeting materials on a publicly available Internet site (which must be different from the SEC's Web site).¹ While all proxy materials must be *available* electronically, issuers will have a choice as to the means of *delivery* of those materials. As the SEC notes in its release adopting these rules, these changes "are intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet potentially to lower the costs of proxy solicitations, and to improve the efficiency of the proxy process and shareholder communications." Issuers electing electronic delivery will still be required to have a supply of proxy materials available in paper copies for those shareholders who request them.

Under the new rules, issuers can either elect

- the "notice only" option, under which the issuer will send a notice to its shareholders that the annual meeting materials are available on the Internet, and not deliver paper copies of those materials unless requested to do so by shareholders; or
- the "full set delivery" option, under which the issuer will continue to deliver paper copies of all proxy materials to shareholders, but must also post the same materials on an Internet site and tell shareholders how they can access the materials on the Internet.

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Issuers are not required to elect one delivery option for all of their shareholders and may choose different delivery options for different groups of shareholders.

Notice Only Option

An issuer that chooses the “notice only” delivery model will be required to send a Notice of Internet Availability of Proxy Materials (a “Notice”) to all shareholders *at least 40 calendar days* before the meeting date or, if no proxies are being solicited, before the date on which votes will be used to take a corporate action. This timing requirement will mean, for most issuers choosing to rely on this option, that they will need to prepare and distribute the Notice well in advance of 40 days prior to the meeting date, because the rules also provide that issuers must provide *intermediaries* (such as brokers who hold securities on behalf of their clients) with information necessary for the intermediary to prepare and distribute its own notice at least 40 calendar days before the meeting date (or shareholder action date). The notice only delivery option may not be used for proxies related to business combination transactions.

The Notice must be written in plain English and must contain the following information:

- a prominent legend in bold-face type that states:

**Important Notice Regarding the
Availability of Proxy Materials for the
Shareholder Meeting to Be Held on [insert
meeting date].**

- **This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.**
- **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [insert Web site address].**
- **If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy.**

Please make your request for a copy as instructed below on or before [insert a date] to facilitate timely delivery.

- the date, time and location of the meeting or the earliest date on which the corporate action may be effected;
- a “clear and impartial” identification of each separate matter to be acted on, and any recommendations of the issuer regarding those matters (only if the issuer chooses to make a recommendation, which is not required), without any supporting statements;
- a list of the proxy materials that are being made available at the specified Web site;
- a toll-free telephone number, an e-mail address and a Web site address where shareholders can request a copy of the proxy materials, both for all meetings of the issuer and for the particular meeting to which the Notice relates;
- any identification numbers that the shareholder needs to use to access his or her proxy card on the Web site;
- instructions on how to access the proxy card, which may not enable a shareholder to execute a proxy without having access to the proxy statement; and
- information about attending the shareholder meeting and voting in person.

The Notice must also be filed with the SEC no later than the first date that the issuer sends the Notice to its shareholders, and no other proxy materials may be sent along with the Notice. If a shareholder who receives the Notice requests delivery of a paper copy of the proxy materials before the meeting has occurred, the issuer must respond to the request by sending a copy of the materials by first-class mail within three business days of receipt of the request.² A shareholder’s request for delivery of a paper copy shall continue with respect to subsequent proxy statements, unless it is revoked by the shareholder.

If the issuer is providing telephone voting as a means for executing a proxy, the Notice must not include the telephone number to use for voting since the shareholders will not, as of the time of receipt of the Notice, necessarily have reviewed the proxy materials themselves.

Issuers relying on the notice only option may follow up the delivery of a Notice with a paper or e-mail mailing of a proxy card, but must

wait to do so until at least ten calendar days from the mailing of the Notice, unless the proxy card is accompanied or preceded by a copy of the proxy materials.

Full Set Delivery Option

If an issuer elects to continue to deliver all proxy materials in paper form, it will nonetheless still be required to:

- post its proxy materials on a publicly available Internet Web site (not including the SEC’s Web site); and
- include information regarding access to the proxy materials that are posted on the Internet and other information regarding the meeting, either by preparing and sending a separate Notice of Internet Availability of Proxy Materials or by including the information in the proxy materials themselves.

Unlike the notice only option, issuers electing to send a Notice under the full set delivery option are not required to send the Notice out to shareholders at least 40 days before the meeting date, and the Notice may, although it is not required to, be accompanied by the proxy statement, annual report and proxy card.

The information that must be provided in any Notice an issuer elects to use under the full set delivery option includes the following information:

- a prominent legend in bold-face type that states:

**Important Notice Regarding the
Availability of Proxy Materials for the
Shareholder Meeting to Be Held on [insert
meeting date].**

- **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [insert Web site address].**
- the date, time and location of the meeting or the earliest date on which the corporate action may be effected;
- a “clear and impartial” identification of each separate matter to be acted on, and any recommendations of the issuer regarding those matters (only if the issuer chooses to make a recommendation, which is not required), without any supporting statements;

- a list of the proxy materials that are being made available at the specified Web site;
- any identification numbers that the shareholder needs to use to access his or her proxy card on the Web site; and
- information about attending the shareholder meeting and voting in person.

Design of Internet Site at which Materials Are Posted

Whether the issuer is using the notice only option or the full set delivery option, the Web site at which the proxy materials are posted must:

- be in a format that is “convenient for both reading online and printing on paper;”
- remain available through the conclusion of the shareholder meeting; and
- “not infringe on the anonymity” of the persons accessing the website. This means that issuers must refrain from using “cookies” or other features that could track the identity of those persons accessing the website to review the proxy materials, and may not disclose a shareholder’s e-mail address. The SEC notes that this may “require segregating those pages [on which the proxy materials are posted] from the rest of the company’s regular website or creating a new website.”

Compliance Dates

Large accelerated filers (not including registered investment companies) are required to comply with these rules for proxy solicitations beginning on or after January 1, 2008. All other filers (including registered investment companies) may voluntarily comply with these rules for proxy solicitations beginning on or after January 1, 2008, and are required to comply with these rules for proxy solicitations commencing on or after January 1, 2009.

¹ *Shareholder Choice Regarding Proxy Materials*, Release No. 34-56135, dated July 26, 2007. See also *Internet Availability of Proxy Materials*, Release No. 34-55146, dated January 22, 2007.

² If the request for copies is received after the conclusion of the meeting, the materials must still be sent, but they do not need to be sent by first class mail nor do they need to be sent within three

business days.

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*If you have any questions or comments
on this information please contact*

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