

## Allen Matkins



**[Keith Paul Bishop](#)**

Partner  
Orange County  
(949) 851-5428  
[kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)



**[Matthew J. Ertman](#)**

Partner  
Los Angeles  
(213) 955-5579  
[mertman@allenmatkins.com](mailto:mertman@allenmatkins.com)



**[Roger S. Mertz](#)**

Partner  
San Francisco  
(415) 273-7441  
[rmertz@allenmatkins.com](mailto:rmertz@allenmatkins.com)

### About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 240 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights,

## Corporate and Securities

### E-Proxy Becomes Mandatory on January 1, 2009 – Two Questions That Your Company Should be Asking Now.

On January 1, 2009, the Securities and Exchange Commission's E-proxy rules become mandatory for all companies that are subject to the Commission's proxy rules. This means that all companies that are subject to the Commission's proxy rules will be required to post their proxy materials on an Internet website. To prepare your company for compliance, you should ask the following two questions.

**The information in this legal alert pertains to any public company.**

***Will your company use its own website or use a third party for posting proxy materials ?*** All companies will be required to make their proxy materials available on an Internet website regardless of how they deliver their proxy materials. Companies may satisfy this requirement by either contracting with a vendor for website hosting or using their own website. If your company decides to use its own website, you should begin working with your IT department to ensure that your materials will be posted in conformity with the Commission's requirements. For example, a company may not simply provide a link to the materials on the Commission's EDGAR website. The Commission's requirements for website posting of proxy materials include the following:

- The proxy materials should be posted in a format that provides a version of those materials, including all charts, tables, graphics, and similarly formatted information, that is substantially identical to the paper version of the materials.
- The proxy materials should be presented in a readily searchable format, such as HTML.
- The website may not track the identity of persons accessing the website to view the proxy statement.
- The website may not require the installation of any "cookies" or other software that might collect information about the person accessing the site.
- To the extent a shareholder may need additional software to view the document, the website must contain a link to enable the shareholder to obtain the software free of charge.
- The proxy materials must be presented on the website in a format that is convenient for both reading online and printing on paper.

San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law, taxation, land use, bankruptcy and creditors' rights, and environmental. [more...](#)

- The materials must be available free of charge.

**How will your company deliver its proxy materials?** The E-proxy rules allow companies to use any of the following three models:

- Full-set
- Notice-only; or
- Hybrid

Under the full-set model, the company delivers a full set of proxy materials (including a notice of Internet availability) to its shareholders. Under the notice-only model, the company delivers a notice of Internet availability. It is also possible to use a hybrid model – sending a full set of proxy materials to some shareholders and a notice only to others.

Your company's choice of delivery method will affect the cost of proxy solicitation, the voting response and the timing of the solicitation. While experience has shown that the notice-only model saves money in printing and mailing costs, companies experience a depressed proxy return - particularly from their non-institutional shareholders.

Companies have already operated successfully under the Commission's E-proxy rules. For those that have not, compliance will become mandatory on January 1, 2009.

**Please feel free to give us a call if we can be of assistance in understanding how the E-proxy rules affect you.**

#### Allen Matkins Corporate and Securities Attorneys

Keith P. Bishop	<b>Orange County</b>	<b>Los Angeles</b>
Joe M. Davidson	(949) 553-1313	(213) 622-5555
Matthew J. Ertman		
Debra Dison Hall	<b>San Diego</b>	<b>San Francisco</b>
Brian C. Leck	(619) 233-1155	(415) 837-1515
Clark H. Libenson		
James E. McCormick	<b>Century City</b>	<b>Del Mar Heights</b>
Roger S. Mertz	(310) 788-2400	(858) 481-5055
Geoffrey Perusse		
Roberta V. Romberg	<b>Walnut Creek</b>	
D. Stanley Rowland	(925) 943-5551	
Philip C. Schroeder		
Nick M. Unkovic		

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