

## **SEC Adopts Final Rule Regarding Internet Access to Proxy Materials**

**August 7, 2007**

The SEC recently adopted amendments to the proxy rules under the Securities Exchange Act of 1934 (the Exchange Act), which enable shareholders to choose the means by which they access proxy materials and require issuers to make proxy materials available via the Internet. In particular, the amendments provide that issuers must comply with the notice only option, the full set delivery option, or a combination of the two when distributing proxy materials to shareholders.

### **Notice Only Option**

Under the notice only option, an issuer must post its proxy materials on an Internet website and send a Notice of Internet Availability of Proxy Materials (Notice) to shareholders at least 40 calendar days in advance of the shareholder meeting. The Notice must contain certain specific information, such as the date, time, and location of the meeting; a list of the matters to be acted on; and instructions as to how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement.

An issuer that elects to use the notice only option must provide a paper or email copy of the proxy materials at no charge upon shareholder request and must permit shareholders to make a permanent election to receive paper or email copies of future proxy materials. To facilitate such requests, the issuer must provide a toll-free telephone number, an email address, and a web address by which a shareholder can request a copy of the proxy materials or make a permanent election to receive copies of any proxy materials on a continuing basis.

The amendments also require an issuer to provide shareholders with a method to execute proxies as of the time the Notice is first sent to shareholders. This may be satisfied through an electronic voting platform, a toll-free number for voting, or a proxy card that can be downloaded or printed from a website. An issuer may not, however, send a paper or email proxy card to a shareholder until 10 calendar days after the date it sends the Notice to shareholders, unless the proxy card is accompanied or preceded by a copy of the proxy statement and an annual report (if required) sent via the same medium.

### **Full Set Delivery Option**

Under the full set delivery option, an issuer may deliver a full set of proxy materials, which consists of the Notice, proxy statement, annual report (if required), and proxy card, but must also post the proxy materials on a publicly accessible website no later than the date the Notice is first sent to shareholders. An issuer need not prepare a separate Notice if the issuer incorporates all of the Notice information into the proxy statement and proxy card. Moreover, an issuer does not need to provide the 40 calendar days' notice that is otherwise required under the notice only option. The issuer is also not required to provide the shareholder with copies of the proxy materials upon request.

### **Implications for Intermediaries**

Notably, the amendments also affect how intermediaries disseminate proxy materials to their customers. Under the notice only option, intermediaries must deliver a separate Notice that contains the same type of information as

the issuer's Notice, but which is tailored specifically for beneficial owners. Accordingly, under the notice only option, an issuer or other soliciting person must provide each intermediary with all necessary information in sufficient time for the intermediary to prepare and send its Notice at least 40 calendar days before the shareholder meeting date. Similar to issuers, the intermediary must also send paper copies of the proxy materials upon request; permit beneficial owners to make a permanent election to receive paper or email copies of proxy materials, keep records of beneficial owner preferences, provide proxy materials in accordance with such preferences, and provide a means to access a request for voting instructions no later than the date the Notice is first sent.

Under the full set delivery option, an intermediary must forward the issuer's full set of proxy materials to beneficial owners within five business days of receipt from the issuer. The intermediary must also either prepare a separate Notice and forward it with the full set of proxy materials or incorporate any information required in the Notice, but not appearing in the issuer's proxy statement, in its request for voting instructions.

### **Compliance Dates**

Issuers that meet the definition of "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act will be required to comply with the amendments by January 1, 2008; registered investment companies, soliciting persons other than the issuer, and issuers that are not large accelerated filers are not required to comply with the amendments until January 1, 2009.

[Read the SEC's Final Rule Release in its entirety.](#)

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