

# *Internet Availability of Proxy Materials*

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# Overview

- New Exchange Act Rule 14a-16 enables issuers to satisfy requirements to furnish the proxy statement and annual report to shareholders by:
  - sending a Notice of Internet Availability of Proxy Materials (the “Notice”); and
  - posting the proxy materials (proxy statement, annual report to shareholders, form of proxy) on the Internet.
- Shareholder consent to furnishing materials via the Notice is not required.
  - Shareholders must affirmatively request paper or e-mail delivery.
- The Rule 14a-16 notice and access model may be used for some proxy materials while traditional forms of transmission may be used for others.
  - For example, the Notice may be used for the proxy statement while the U.S. mail is used for the annual report to shareholders.
- The notice and access model does not apply to business combination transactions.

# Contents of the Notice – Issuers

A “prominent legend”:

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

- 1. 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.**
- 2. The [proxy statement] [information statement] [annual report to shareholders] [is/are] available at [Insert Web site address].**
- 3. 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.**

# *Contents of the Notice – Issuers (cont'd)*

- Date, time and location of the meeting.
- A “clear and impartial” identification of each separate matter to be acted on and the issuer’s recommendations – but no supporting statements.
- A list of materials available on the specified Web site.
- A toll free telephone number, an e-mail address and an Internet Web site where the shareholder can request proxy materials
  - relating to the particular meeting to which the proxy materials relate or
  - relating to all of the issuer’s future shareholder meetings.

# Contents of the Notice - Issuers (cont'd)

- Any control/identification numbers the shareholder needs to access the form of proxy.
- Instructions on how to access the form of proxy.
  - But the instruction must not enable the shareholder to execute a proxy without having access to the proxy statement.
- Information on how to obtain directions to attend the meeting and vote in person.

# *The Notice Must “Stand Alone”*

- “We believe that it is important for the Notice to be furnished in a way that brings it to the shareholder’s attention.”
- The Notice may not contain any additional information and cannot be incorporated into or combined with another document, except:
  - a notice of shareholder meeting required under state law, if permitted under state law, and
  - a statement that no personal information other than the identification or control number is necessary to execute a proxy.
- The Notice must be sent separately and may not accompany any other document or materials except:
  - a pre-addressed, postage paid reply card for requesting a copy of the proxy materials and
  - a notice of shareholder meeting required under state law (if not combined with the Notice).

# *The Notice Must Reflect “Plain English” Principles*

- The issuer must use plain English principles in the organization, language and design of the Notice.
- Pictures, logos or similar designs are permissible “so long as the design is not misleading and the required information is clear.”

# Web Site Requirements

- The Internet Web site address in the Notice must be specific enough to lead shareholders directly to the proxy materials.
  - The Web site may be a central site with prominent links to each of the documents listed in the Notice.
- A link to EDGAR is not permissible.
- Proxy materials furnished under Rule 14a-16 must be posted on the Web site by the time the issuer sends the Notice to shareholders.
- All additional soliciting materials sent to shareholders or made public after the Notice is sent must be made publicly available at the Web site address no later than the date on which the materials are sent to shareholders or made public.
- The materials must be presented in a format convenient for both reading online and printing on paper.
- The materials must remain on the Web site through the conclusion of the meeting.



# Use of Proxy

- The initial Notice may not be accompanied by a proxy card.
- However, a proxy card may be mailed to shareholders if:
  - it is sent ten calendar days or more after the Notice was sent to shareholders, together with another copy of the Notice, or
  - it is accompanied with or has been preceded by a copy of the proxy statement and annual report to shareholders transmitted through the same delivery medium.

# *Use of Proxy (cont'd)*

- The issuer must provide shareholders with a means to execute a proxy as of the time the Notice is first sent to shareholders.
  - Providing a shareholder with a means to request a paper proxy card is not sufficient.
  - The Notice should reference any control or identification number needed to execute a proxy.

# *Filing Requirements*

- The Notice constitutes “other soliciting material.”
- The issuer must file the Notice with the SEC not later than the date the Notice is first sent to shareholders.

# Householding

- The issuer may “household” the Notice in accordance with Rule 14a-3(e).
- But each household account must be able to execute a separate proxy.
  - If the issuer uses identification or control numbers for proxy voting, it must provide a separate number to each account at the shared address.

# Timing Requirements for Issuers Under The Access and Delivery Model

- The Notice must be sent to shareholders 40 calendar days or more prior to the date of the shareholder meeting.
- All information required to be included in the Notice must be provided to each intermediary (a broker-dealer, bank or other intermediary) in sufficient time for the intermediary to prepare and send its own Notice to beneficial owners at least 40 calendar days before the meeting date.
- If a shareholder requests, the issuer must provide, at no cost to the shareholder, a paper copy or an e-mail copy of the proxy materials (depending on the request) within three business days after receiving a request for a paper or e-mail copy.
  - First class mail or other “reasonably prompt means of delivery” must be used for sending paper copies.
- The issuer must provide copies of proxy material at the request of shareholders until one year after the conclusion of the shareholder meeting.

# *Permanent Paper or Electronic Delivery Requests*

- The issuer must maintain records of shareholder requests to receive materials in paper or e-mail for future solicitations.
- The issuer must continue to provide paper or e-mail copies of proxy materials to the shareholder until the shareholder revokes the request.
  - Footnote 86: “Nothing in the proxy rules prohibits an issuer from structuring incentives to encourage shareholders to accept electronic delivery or the notice and access model.”

# Shareholder Privacy Concerns

- Rule 14a-16(k)(1): “A registrant or its agent shall maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing such Web site.”
  - The issuer may not track the identity of persons accessing the proxy materials.
  - The Web site cannot require the installation of “cookies.”
  - The issuer may not use any e-mail address obtained from a shareholder requesting a copy of the proxy materials for any purpose other than sending the proxy materials.
  - The shareholder’s e-mail address may not be transferred to other persons without the shareholder’s consent, except in connection with the distribution of proxy materials.

# *Access and Delivery Model for Intermediaries*

- If:
  - the issuer informs an intermediary that it intends to rely on the Rule 14a-16 access and delivery model, and
  - provides the relevant information required to be included in the issuer's Notice, the intermediary must prepare its own Notice.
- The intermediary may follow the notice and access model with respect to the issuer's proxy materials only if the issuer requests that it do so.
  - The intermediary could seek the affirmative consent of an account holder to electronic delivery of proxy materials.



# *Access and Delivery Model for Intermediaries (cont'd)*

- The intermediary must establish a Web site at which beneficial owners are able to access the intermediary's request for voting instructions.
- The intermediary may establish a Web site at which beneficial owners can access the proxy statement and other soliciting materials.
  - The alternative is reference to the issuer's Web site.
- The Web site requirements for issuers (timing of posting of materials, Web site address, means to execute proxy, format, protection of shareholder anonymity) apply to intermediaries.

# Requirements for Intermediary Notice

- The intermediary Notice generally will contain the same information as is required in the issuer's Notice, modified to address beneficial owners.
  - The intermediary must provide its own, or its agent's, toll-free telephone number, e-mail address and Web site address to service requests from beneficial owners for copies of the proxy materials.
  - If the intermediary is a broker-dealer, the Notice must contain a brief description of applicable rules that permit the broker-dealer to vote the securities if the beneficial owner does not return voting instructions.
- The intermediary Notice is subject to the limitations applicable to issuers regarding material included in the Notice and accompanying material.
- The intermediary Notice also is subject to plain English principles.

# *Timing with Regard to Intermediary Notices and Delivery of Proxy Materials*

- The issuer must provide the intermediary with information required for inclusion in the Notice in sufficient time for the intermediary to prepare and send the intermediary Notice at least 40 days before the meeting date.
- The intermediary must send the intermediary Notice at least 40 days prior to the shareholder meeting.
  - In connection with solicitations by persons other than the issuer, the Notice may be sent at the later of 40 days prior to the shareholder meeting and 10 days after the issuer first sends its proxy statement or Notice to shareholders.
- Upon receipt of a request for a copy of the materials from a beneficial owner, the intermediary must request a copy of the materials (either paper or e-mail) from the issuer or other soliciting person within three business days after receiving the request.

# *Timing with Regard to Intermediary Notices and Delivery of Proxy Materials (cont'd)*

- The issuer must provide to the intermediary a paper copy or an e-mail copy of the proxy materials (depending on the request) within three business days after receiving a request from the intermediary for a paper or e-mail copy.
- The intermediary must forward a copy of the materials to the beneficial owner, in the form requested, within three business days after receiving the materials.
- In addition, upon the request of the issuer or other soliciting person, the intermediary must send a copy of the request for voting instructions together with a copy of the intermediary Notice, to shareholders specified by the issuer or other soliciting person, ten or more days after the initial intermediary Notice was sent.

# *Permanent Paper or Electronic Delivery Requests to Intermediaries*

- The intermediary must maintain records of shareholder requests to receive paper or e-mail copies of proxy materials and provide copies of the materials to a shareholder that has made the request, for all securities held in the shareholder's account, until the shareholder revokes such request.

# Other Soliciting Persons

- Soliciting persons, other than the issuer, may use the notice and access model.
- The mechanics of notice and access for other soliciting persons are similar to those relating to the issuer, but there are important differences.
  - Other soliciting persons need not send a Notice to all shareholders - targeted solicitations are okay.
    - For example, an other soliciting person can determine not to have a Notice sent to any shareholder that has previously requested paper delivery of proxy materials; however, the other soliciting person must send a paper or e-mail copy of its proxy statement to any requesting shareholder to whom it has sent a Notice.
  - The other soliciting person's Notice may be sent at the later of 40 days prior to the meeting or 10 days after the issuer first sends its proxy statement or Notice to shareholders.

# *Other Soliciting Persons – Treatment of Agenda Items in Notice*

- The other soliciting person's Notice need refer only to the agenda items of which the other soliciting person has knowledge.
- The other soliciting person's Notice also must state that there may be additional agenda items and shareholders cannot direct a vote regarding these items on the other soliciting person's proxy card.
- If the other soliciting person is seeking authority for voting on less than all of the agenda items, the other soliciting person's Notice must indicate if execution of the other soliciting person's proxy card will invalidate the shareholder's earlier vote on the other agenda items.

# *Other Soliciting Persons - Shareholder Lists and Furnishing of Proxy Statements*

- Rule 14a-7 applies to the notice and access model.
- If the issuer is providing its shareholder list to the other soliciting person, it must indicate which shareholders have requested paper copies of proxy materials.
- If the issuer is forwarding the other soliciting person's proxy material, the other soliciting person may not designate for delivery of the Notice persons who have requested paper and/or e-mail copies of the proxy statement.



# *When Will the Notice and Access Model be Effective?*

- Effective date:
  - A issuer may not send a Notice prior to July 1, 2007
  - Therefore, the notice and access model cannot be used for shareholder meetings held before August 10, 2007
- The SEC has proposed making the notice and access model mandatory. If adopted, the requirement will be applicable to:
  - large accelerated filers on January 1, 2008; and
  - all other issuers on January 1, 2009

# Internet Availability of Proxy Materials Issuer Timetable

When	Event
Approximately 47 days prior to meeting date	- Provide information to intermediaries “in sufficient time” for the intermediaries to prepare, print and send the intermediary Notice 40 days prior to meeting date. [Rule 14a-16(a)(2)]
40 days prior to meeting date	- Send Notice. [Rule 14a-16(a)(1)] - Post proxy materials on Web site. [Rule 14a-16(b)(1)] - File Notice and proxy materials with the SEC. [Rule 14a-6(b)]
10 days after sending issuer Notice	- Sending of proxy card, together with additional copy of Notice, permitted. [Rule 14a-16(h)]
Date additional soliciting materials sent to shareholders or made public	- Post additional materials on Web site. [Rule 14a-16(b)(2)] - File additional materials with the SEC. [Rule 14a-6(b)]
Three business days after receipt of request	- Send paper or e-mail copy of proxy materials to requesting record holder or intermediary. [Rule 14a-16(j)(1); Rule 14a-16(j)(2)]
Conclusion of meeting	- Proxy materials may be removed from Web site. [Rule 14a-16(b)(1)]
After one year following conclusion of meeting	- Provision of paper or e-mail copies of proxy materials to requesting record holders and intermediaries no longer required. [Rule 14a-16(j)(3)]

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