

BRIEFING

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Corporate & Securities
Practice Group

New SEC E-Proxy Rules

The SEC recently adopted new rules affecting the proxy process:

- It is now mandatory for all proxy materials (including the annual report to shareholders) to be posted on the issuer's Web site (currently, such posting is optional).
- Companies now have two ways to deliver proxy materials to shareholders:
 - by sending shareholders a notice stating the materials are available on the Internet, or
 - by sending shareholders the traditional full set of proxy materials on paper, as well as information about the availability of these materials on the Internet.

As a result, companies that wish to continue to distribute proxy materials on paper can do so with only minor changes in practice.

Compliance Dates

"Large accelerated filers" must comply for proxy solicitations commencing on or after January 1, 2008. All other companies must comply on or after January 1, 2009, but may voluntarily comply sooner.

Full Set Delivery Option

Companies that choose to deliver proxy materials on paper will have only minor adjustments to make to traditional practices:

- A notice of Internet availability of the proxy

materials will need to be provided as a separate document or integrated into the traditional proxy materials.

- The proxy materials must be made available on the Internet at a Web site address that takes the user directly to the materials (or to a central site with prominent links to the materials), must remain available through the meeting date, and must be in a readily searchable format.
- The Web site on which the proxy materials are posted cannot require installation of cookies or otherwise collect information about the user. This may require modification of Web site settings or the creation of a separate Web site.
- Brokers, banks, and other intermediaries are required to:
 - forward the issuer's full set of proxy materials to beneficial owners within five business days of receipt and
 - either prepare a separate notice of Internet availability of the proxy materials and forward it with the full paper set, or incorporate information required by the notice into its request for voting instructions

Notice Only Option

Companies choosing this option will need to pay particular attention to coordinating efforts with banks, brokers, and other intermediaries, which are given separate obligations under this option. The notice only option requires:

- posting of proxy materials on the issuer's Web site in the same manner described under the "full set delivery option" above

**THE POSTING OF ALL
PROXY MATERIALS ON THE
ISSUER'S WEB SITE IS NOW
MANDATORY.**

- mailing to shareholders of a notice of Internet availability of those proxy materials:
 - notice must be mailed at least 40 calendar days prior to meeting date, including by intermediaries — this effectively means the notice must be prepared and sent to the intermediaries earlier than 40 days prior to the meeting
 - no proxy card can accompany the notice (it would be posted on the company's Web site)
 - the notice must be in "plain English" and contain certain required information, as follows:
 - the date, time, and location of the shareholders meeting;
 - a prominent, bold-face legend with specific language stating that the company's proxy materials are available on the Internet and giving the Web site address, that a shareholder can request paper copies of the materials at no charge, and the manner in which they may do so;
 - a list of proxy materials available on the Web site;
 - a list of each matter intended to be submitted to shareholders for their approval;
 - a toll-free telephone number, e-mail address, and Web site address where shareholders can request paper or e-mail copies of the proxy materials;
 - information about attending the shareholder meeting and voting in person; and
 - a control or identification number that each shareholder needs in order to access a proxy card and instructions on how to obtain that access; provided that the shareholder not be able to execute the proxy without having access to the proxy materials.
- Any shareholder requesting paper copies must be able to receive them at no

charge from the issuer or the intermediary within certain timeframes.

Note that banks, brokers and other intermediaries have separate obligations under the notice only option. Among other matters, these intermediaries must provide their own notice to beneficial owners of the company's shares, and must process requests for paper copies of the proxy materials.

Conclusion

The notice only model is new, and both its ability to deliver meaningful cost savings and its potential impact on shareholder voting (especially given recent NYSE initiatives to further restrict broker discretionary voting) are unclear. Adoption of this new model should be undertaken only after careful consideration and advance planning with other proxy process participants.

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