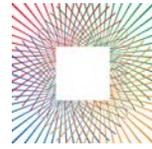


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*The* **BANK**  
*of* **NEW YORK**

Nancy M. Morris, Secretary  
Securities Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Subject: File Number S7-03-07; Internet  
Availability of Proxy Materials**

Dear Ms. Morris:

March 30, 2007

The Bank of New York (the “Bank”) appreciates the opportunity to comment on the proposed regulations referenced above. The Bank is a substantially large transfer agent and proxy tabulator, servicing more than 325 U.S. issuers and the American Depository Receipt and/or global share programs of well over 500 non-U.S. entities.

The Bank supports the SEC initiatives to cut needless expenses and improve the competitiveness of corporate America and fully supports the Notice and Access model provided in the earlier rule making, S7-10-05. However, we have some reservations with the Proposed Rule, which makes the Notice and Access model mandatory.

### **1. Insufficient Actual Operating Experience and Cost Data**

The voluntary notice and access model now in effect permits issuers to send the Notice of Internet Availability of Proxy Materials on and after July 1, 2007. While some companies already offer consensual Internet access to material, the consensual process does not provide operating experience that can be applied to the Notice and Access model. No significant operating data will be available from implementation of the voluntary model until completion of the 2008 proxy season, at a minimum. Even then, the results may not fairly represent the norm as they may be skewed owing to the first time effects of start-up and investor unfamiliarity with the new process. The impact of the voluntary model on costs, savings, and even the actual conduct/results of the meetings of those issuers choosing to employ the model, will not be sufficiently understood by the date of the proposed implementation of the mandatory model. The Bank recommends the decision regarding a mandatory rule be delayed until such data is available, and appropriate analyses performed.

### **2. Increased Issuer Set-Up Costs**

The proposed Rule will require issuers to post their annual meeting materials to a publicly available website and provide shareholders with an electronic voting platform and an electronic means to make an election regarding their delivery preferences. The rule requires issuers to notify shareholders regarding these facilities no less than 40 days prior to the meeting in question. Even if the issuer chooses to mail a proxy with the notice, thereby providing traditional materials in hardcopy, it is confronted with the incremental expense of creating the electronic platforms. This may not be cost effective for some issuers.

A study conducted by one transfer agent of companies with smaller shareholder bases offering electronic voting showed that 72.3% of the proxies voted were by paper, 15.0% by telephone and 12.6% by Internet. The study concluded that the cost of establishing electronic voting varies from vendor to vendor and was estimated to be in excess of \$3,000.

Given these set-up expenses, smaller firms may not find it economically advantageous to utilize electronic voting and would probably not realize the savings contemplated by the mandatory model. Instead, the model could introduce an added expense.

### **3. Difficulty of Meeting 40-Day Requirement**

The mandatory rule effectively requires all issuers to have completed the design of all their annual meeting materials by no later than 40 days prior to their annual meetings. In the face of increasing concern with corporate governance, our members have witnessed issuers seemingly performing additional reviews and revisions of the materials in question. While these additional reviews are commendable, they are time consuming and may make it difficult, if not impossible, for some companies to have their documents available for posting on the Internet within the time frame required by the proposed rule. Additionally, the fulfillment requirements of the proposed rule effectively require the issuer be in a position to fulfill requests for hardcopy starting on approximately the 36<sup>th</sup> day prior to the meeting. If some issuers are pressed for time as per the indications above, they will have difficulty making physical materials available in time to comply with the rule's turnaround standard.

### **Conclusion**

The Bank views the voluntary notice and access model enacted earlier this year as a timely and innovative initiative. However, we are concerned at the suggestion of making the present model mandatory in light of the factors cited above.

The notice and access model will make economic sense for many issuers but perhaps not for all. In fact, it may specifically disadvantage some. In those cases where it makes economic sense, market forces will certainly drive issuers to use the model to cut printing and mailing costs. We respectfully suggest that this rule may be premature and that the decision regarding a mandatory model be tabled pending analyses of experiences gained by the market's implementation of the voluntary model.

We would like to thank the Commission for the opportunity to present these concepts and again applaud the development of Notice and Access initiative.

Respectfully,

Gary N. Nazare