

# COUNCIL OF INSTITUTIONAL INVESTORS

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## Via Email

March 30, 2007

Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Universal Internet Availability of Proxy Materials (File No. S7-03-07)*

Dear Ms. Morris:

I am writing on behalf of the Council of Institutional Investors, an association of more than 135 public, corporate and union pension funds with combined assets of over \$3 trillion. As a leading voice for long-term, patient capital, the Council believes that timely, efficient disclosures to investors are integral to a strong system of corporate governance and welcomes the opportunity to comment on the proposed amendments to the proxy distribution and solicitation rules dictated in the Securities and Exchange Commission's ("Commission") release, *Universal Internet Availability of Proxy Materials* ("Proposal").

The Council believes that the ability of investors to receive proxy-related disclosures without undue hurdles is of paramount importance to the vitality of the U.S. capital markets. In commenting on the Commission's December 2005 release related to the electronic disclosure of proxy materials, *Internet Availability of Proxy Materials (File No. S7-10-05)*, the Council articulated several concerns it had about the impact the "notice and access" model as initially conceived would have on shareowners and the markets and encouraged the Commission to adopt a "slower paced, phased-in approach to introducing electronic delivery."<sup>1</sup> The Council is therefore pleased that the Commission has chosen to initiate an opt-in voluntary period for issuers choosing to implement the newer "universal Internet availability" model. The Council also supports the extension of the period of time an issuer would have to send a Notice of Internet Availability of Proxy Materials ("Notice") to at least 40 calendar days prior to the date of the annual meeting and the Proposal's requirement that issuers allow shareowners to permanently elect to receive paper proxy materials for all future solicitations by the issuing company.

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<sup>1</sup> Letter from Ann Yerger, Executive Director, *Council of Institutional Investors*, to Nancy M. Morris, Secretary, *Securities and Exchange Commission*, February 8, 2006, 1.

March 30, 2007

Page 2 of 3

However, the Council has identified a few areas of the Proposal that may prove troublesome for investors. Some of the aspects of the proposed rule that concern the Council include:

- ❖ *Separation of ballot/voting mechanism from the disclosures.* Although the accompanying release to the Proposal disallows issuers from sending the proxy card with the Notice for up to ten calendar days following the date the Notice is sent, the release still permits issuers to separate the proxy card from the proxy materials when the proxy card is “preceded by a copy of the proxy statement and any annual report to security holders sent via the same medium.”<sup>2</sup> The potential separation of these items is a serious concern to the Council as it introduces an unnecessary barrier to “[t]houghtful and informed” proxy voting by shareowners.<sup>3</sup> This additional hurdle may compromise shareowner rights and corporate governance as a whole.
- ❖ *Potential abuse of shareowners’ privacy.* The release prohibits an issuer from compromising the anonymity of shareowners accessing the Internet web site containing the issuer’s proxy materials and disallows issuers from sharing shareowner email addresses with “any person other than the issuer’s employee or agent to the extent necessary to send a copy of the proxy materials....”<sup>4</sup> In light of the many public examples of information tracking, collection and misuse on Internet web sites and electronic communications systems, the Council remains concerned about the potential for privacy abuse.

The Council asks the Commission to consider the above concerns as it reviews the experiences of issuers and shareowners with “universal Internet availability” during the voluntary opt-in period beginning July 1, 2007. However, the Council fears six months is insufficient time for the Commission to conduct a comprehensive evaluation of the proposed model and urges the Commission to consider pushing back the effective date for large accelerated filers.

Finally, we consider electronic disclosure to be one part of the broader issue of the proxy process. We would therefore be interested in the formation of a working group of

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<sup>2</sup> Release Nos. 34-55147, *Universal Internet Availability of Proxy Materials (File No. S7-03-07)*, January 22, 2007, 9.

<sup>3</sup> Letter from Richard L. Trumka, Secretary-Treasurer, *American Federation of Labor and Congress of Industrial Organizations*, to Nancy M. Morris, Secretary, *Securities and Exchange Commission*, January 11, 2006, 1. In his letter, Mr. Trumka asserts, “Thoughtful and informed proxy voting by shareholders is critical to effective corporate governance and the long-term performance of public corporations.” He continues with the AFL-CIO’s position, “We believe that this fundamental principle—shareholders should review proxy disclosures before voting—should guide the SEC’s rulemaking on the electronic delivery of proxy materials.”

<sup>4</sup> Release Nos. 34-55147, 9.

March 30, 2007  
Page 3 of 3

relevant market participants, including institutional shareowners, to discuss how the process might continue to be improved.

We look forward to working with you on future steps towards the electronic dissemination of proxy materials in a manner that does not create hurdles for investors to receive these important, time sensitive materials.

Respectfully,

Cambria Allen  
Analyst