



**SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS**

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November 20, 2009

Elizabeth M. Murphy, Secretary
U.S Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Reference No. S7-22-09
Amendments to Rules Requiring Internet Availability of Proxy Materials
Release Nos. 33-9073; 34-60825; IC-28946

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals appreciates the opportunity to respond to the request for comments made by the Securities and Exchange Commission (the "Commission") in its proposed rule entitled "Amendment to Rules Requiring Internet Availability of Proxy Materials" (the "Proposed Rules").

The Society of Corporate Secretaries & Governance Professionals is a professional association, founded in 1946, with over 3,100 members who serve more than 2,000 companies. Our members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies on corporate governance and disclosure. Our members are generally responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements, as well as annual meetings and proxy voting. The majority of Society members are attorneys, although our members also include accountants and other non-attorney governance professionals.

Introduction

In 2007, the Commission amended the proxy rules by adopting a notice and access model that required all issuers and other soliciting persons to provide their proxy materials on a website and furnish notice of the material's availability to shareholders. The notice and access model was intended to promote the use of the Internet as a reliable, cost-efficient and environmentally-friendly means of making proxy materials available to shareholders. We firmly support these goals, and we believe that the notice and access model has had some success in attaining these goals. However, we note that some of the mechanics of

the rules have discouraged many companies from taking full advantage of the notice and access model. In addition, as the Commission noted in its release, the notice and access model has apparently had the unintended consequence of lowering participation by retail shareholders compared to previous voting levels, which levels were already less than ideal.

At the outset, we note our genuine support for the notice and access model, as (i) companies and shareholders benefit from reduced printing and mailing costs through the elimination of the mailing of bulky proxy packages to some or all of a company's shareholders — providing paper materials only upon request; (ii) companies are encouraged to be environmentally responsible organizations committed to reducing the use of paper; and (iii) many shareholders do appreciate the convenience of electronic delivery, since the Internet has become one of the most popular and powerful means of communication.

However, as we discuss below, we believe that the usage by issuers of the notice and access model can be further enhanced, and that retail shareholder participation in the proxy process can be further promoted, if the Commission adopts the changes discussed herein.

Notice and Access is Cost Efficient and Environmentally-Friendly and Should be Maintained.

We believe that access to the Internet has increased, even since the Commission's original notice and access release two years ago -- and that shareholders appreciate efforts by companies in which they have an investment to be more environmentally responsible. For companies that utilize notice and access, the cost savings to the company and to the environment can be substantial. As just one example, a Fortune 100 company that utilized notice and access for the 2009 proxy season was able to decrease the number of printed copies of its proxy materials from hundreds of thousands to approximately 12,000, saving multiple tons of paper and realizing a cost savings of hundreds of thousands of dollars in printing, transportation, warehousing and mailing costs. Although we acknowledge that notice and access may not be the right solution for every issuer given variations in shareholder composition, it should be left as a viable option for every issuer. Concerns about notice and access, such as its effects on retail voter participation, should be addressed - - not by eliminating the notice and access model, but by modifying and enhancing the process, as discussed below. We believe that notice and access has an important role to play in sustaining the environment and by offering companies economic advantages in proxy solicitation, while at the same time ensuring that shareholders timely receive important information in order to exercise their right to vote.

Delivery Should be Reduced to 30 Days Prior to the Meeting

We urge the Commission to decrease the notice period from 40 to 30 days for the issuer. We believe doing so will encourage more issuers to avail themselves of notice and access. We have noted through informal surveys of our members that a number of issuers have been discouraged from using the notice and access model due to the difficulty in meeting the 40-day notice mailing requirement. This year, we believe that meeting the deadline may become even more difficult based on the expectation that the Commission's rules requiring enhanced proxy disclosure on compensation risk, director qualifications, and board and committee structures, et.al., will necessitate more time for companies to comply with these additional disclosure requirements. Therefore, giving issuers an extra 10 days to prepare the proxy would be a way to encourage companies to use and implement the notice and access model. The deadlines for soliciting persons other than the issuer should be modified to provide that they must send the notice by the later of 30 days prior to the meeting or 10 days after the issuer first sends its notice or proxy materials to shareholders. We believe that 30 days is an adequate time for shareholders to request and receive hard copy materials. Indeed, we believe sending the notice at a time that is closer to the time of the meeting will also encourage shareholders to vote. Accordingly, we believe that reducing the notice period from 40 days to 30 days would be beneficial to both issuers and shareholders.

Educational Materials Should be Permitted to be Included with the Notice

We believe that retail shareholder engagement in the proxy process will be enhanced if retail shareholders are educated about their voting rights. One way to do this is to allow and promote better and more frequent communication by companies and the Commission regarding notice and access to shareholders.

We further believe that shareholders are more likely to focus on educational materials when they are directly relevant, and therefore, companies should be permitted to provide shareholders with educational materials along with the notice. These educational materials can help explain the notice, inform shareholders how to vote, make clear that proxy materials are currently available on the company's website, inform shareholders how to access the proxy materials, and set forth general information about the proxy voting process.

Proxy Card/Voting Instruction Form Should be Permitted to be Included with the Notice

In addition to educational materials, we believe the proxy card or voting instruction form should be permitted to be included with the notice. Under current Rule 14a-16(f), companies are not permitted to send a voter instruction form or proxy card along with the notice when complying with their obligations under the proxy rules under the notice and access model. After sending the notice, companies must wait at least 10 days before forwarding a voter instruction form or proxy card. We believe it would facilitate retail shareholder voting and reduce shareholder confusion to include a proxy card or voting

instruction form, with a return envelope, with the first notice mailing. We believe that shareholders are more likely to “take action” and review the proxy materials (which are available on or before the date of the notice mailing), and return a proxy card or voting instructions, if they receive the form with the initial mailing.

As has been reported, and as the Commission notes in the Proposed Rules, some shareholders are attempting to indicate their voting instructions by returning a marked copy of the notice. In this regard, we note the Commission’s concern that sending a proxy card or voting instruction form with the notice has the potential to encourage “uninformed” voting. However, we believe that actions such as shareholders “voting” the notice actually support the view that shareholders do want to vote and are motivated to do so when they receive the notice. We believe concerns about “uninformed” voting can be greatly ameliorated if educational materials are included with the notice.

We acknowledge the possibility that some shareholders may vote without reviewing the materials on the website. However, an issuer cannot force a shareholder to read proxy materials. This is true irrespective of whether such materials are delivered in paper or are available on the issuer’s website. An issuer can only ensure the availability of its materials. In this respect, we note that under the current notice and access process, proxy materials are available at the time the shareholder receives the notice. By permitting the notice or enclosed educational materials to clearly refer the shareholder to the materials on the website, provide the URL address, and emphasize the importance of reviewing the proxy materials, we believe shareholders will be at least as informed about where and how to access the notice materials as they are under the full-set delivery option.

Client Directed Voting is Another Alternative to Increase Voting Rates

In the Proposed Rules, the Commission asked whether “there are other alternatives that would increase the voting rates under the notice and access model.” As discussed above, we believe that shareholder education is one measure that will help to increase retail voting. Shareholders should also be provided with the tools necessary to exercise their rights. We believe that “client directed voting” (CDV) is a tool that would help to increase shareholder responsiveness to and engagement with the notice and access model.

Under CDV, a shareholder would be invited to provide his or her broker or bank custodian with advance standing instructions on the voting of certain appropriate types of proposals. Any standing instructions provided would then later be reflected on the notice cards that the shareholder later receives in connection with particular annual meetings. This in effect “personalizes” the notice card because the card would reflect that shareholder’s own pre-registered preferences. We believe that a shareholder who has already invested his or her time to register for CDV and to provide standing instructions will be more likely to follow up after receiving a notice card that has been personalized in a manner consistent with those instructions. As the proxy materials will be available on the website at the time the shareholder receives the notice, the shareholder would always be provided the opportunity, if he or she desired to do so after reviewing the proxy materials, to override any standing instructions---or allow the instructions to stand.

Notice-Only Fees Should be Reviewed and Set by the New York Stock Exchange Until the Commission Completes its “Proxy Plumbing” Initiative

Finally, the Commission also has asked whether it should address the fees charged by proxy distribution service providers. We note the long history of the role of the NYSE since 1938 in setting fees for “reimbursement” by issuers to their banks and brokers under Rule 465.

We are also aware that the NYSE Proxy Advisory Working Group reviewed and discussed Rule 465 in connection with the SEC’s notice and access rules in 2007, and further that it voted to recommend that the NYSE refrain from setting fees for notice and access. The decision was made at that time after considering the novelty of the notice and access system, and the fact that its use was optional. The Proxy Advisory Working Group also noted the concern of some members that issuers would need to know the costs of notice and access before making a decision whether to use it, and also that negotiation of a fee may be difficult without greater competition in the industry. (see, August 27, 2007 Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, dated June 5, 2006 at 7-8). We believe that those concerns have come to pass. Some of our members who retain the services do not understand the fees charged and have not been able to negotiate the fees, given that there is currently little, if any, competition for notice and access services. While we take no position at this time as to whether or not the regulation of proxy fees by the NYSE is the appropriate model going forward, we respectfully request that the Commission direct the NYSE to review and establish an appropriate per account fee for the notice only option until such time that the Commission reviews the overall proxy voting process. We believe that notice and access fees are no different in nature than the fees charged per account for full-set delivery.

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In summary, we believe that improving the notice and access model to enable and encourage more companies to utilize it would help to educate retail shareholders - - as more companies would then be reaching out to their retail shareholders; and, as more retail shareholders become educated about the process, it is more likely they will vote. We also believe that the likelihood of shareholders voting will increase if a proxy card or voting instruction form (including a client-directed voting instruction form) and educational materials are included with the notice.

We appreciate the opportunity to comment on these important proposals and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

The Society of Corporate Secretaries & Governance Professionals

By: 
Chair, Securities Law Committee

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