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November 20, 2009

Attention: Ms. Elizabeth M. Murphy, Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed Rule: Amendments to Rules Requiring Internet
Availability of Proxy Materials
File No. S7-22-09

Dear Ms. Murphy:

The Corporate & Securities Law Committee (the "Committee") of the Association of Corporate Counsel (the "ACC") is pleased to have this opportunity to comment on the Securities and Exchange Commission's (the "Commission") Proposed Rule - Amendments to Rules Requiring the Internet Availability of Proxy Materials (the "Proposed Rule").

ACC is the world's largest bar association, serving exclusively the professional needs of attorneys who practice in the legal departments of corporations, associations and other private sector organizations around the world. It has nearly 25,000 members in over 80 countries, and these members are employed by more than 10,000 organizations. As one of ACC's largest committees, the Committee consists of approximately 6,700 members at over 4,000 organizations in the United States. The Committee's membership spans organizations ranging from small public and private companies to some of the world's largest public and private corporations. ACC's membership includes attorneys from 95 of the Fortune 100 companies and over 400 of the Fortune 500 companies. Accordingly, the Committee respectfully submits this letter as a representation of the views of a majority of the constituent members and, therefore, not necessarily as a representation of the views of the ACC as a whole.

Introduction

We applaud the Commission's efforts to permit issuers to "more effectively use" the Notice and Access model. The Proposed Rule, if adopted in substantially the form proposed, would further improve the Notice and Access process, allowing for even more widespread use. We are not addressing, however, the proposed changes to Rule 14a-16(1)(2)(ii) with respect to non-issuer soliciting persons.

While we generally support the Proposed Rule, we would like to offer several comments and suggestions that could further improve the Notice and Access process. Our responses, which we have grouped by general topic, do not necessarily follow the same order of the Commission's questions in the Proposed Rule.

Specific Comments

I. The Commission should not suspend the Notice and Access Rules.

The Commission should not consider a proposed rule to suspend the Notice and Access model until a later date. The Notice and Access model has allowed issuers and shareholders to take advantage of technological advances and the growth of the Internet as a primary form of communication. When the Commission adopted the final rule establishing the Notice and Access model, it stated that research indicated that approximately 80% of U.S. investors had access to the Internet in their homes,¹ and we believe the Internet has proven to be both a fast and reliable means of communicating with such investors.

We recognize that all of the expected benefits of the Notice and Access model have not yet materialized. However, it is our understanding that issuers are continuing to consider and explore the best ways to take advantage of the Notice and Access rules. Over time, issuers will develop best practices regarding how to use the Notice and Access model most effectively. Suspension of the Notice and Access model would delay the development of these practices.

Likewise, any action to discontinue Notice and Access would be counterproductive because such action would:

- A. result in corporate waste for issuers that allocated financial resources to implement Notice and Access in the 2008 and 2009 proxy seasons;
- B. preclude continued cost savings;
- C. diminish shareholder voting convenience; and
- D. stall the environmental benefits.

II. The Notice and Access Rules should be amended to increase Notice flexibility and to allow issuers to include explanatory information with the Notice.

We favor the Commission's proposal to provide issuers with additional flexibility with respect to the format and language used in the Notice sent to shareholders. The proposed changes would allow issuers to provide shareholders with a Notice that uses clear, plain English language and avoids the investor confusion created by the boiler-plate, legalistic legend required in the current Notice. With increased flexibility, issuers would be able to more effectively explain the importance and effect of the Notice, without the one-size-fits-all approach mandated by the current Notice rules. The proposed requirement that the Notice "address certain topics" would stem any potential abuse that could result from the added flexibility.

We encourage the Commission to permit the Notice to be accompanied by materials that explain the process of receiving and reviewing proxy materials. In particular, issuers should be permitted to include with the Notice educational materials that explain: (i) the Notice and Access model, including the purpose of the Notice; and (ii) the benefits to the issuer of using the model, including the benefits to the issuer of using the notice-only delivery method. Each issuer should have the flexibility to share its rationale for adopting the Notice and Access model with its

¹ See Internet Availability of Proxy Materials, Release No. 34-55146 (Jan. 22, 2007) [72 FR 4148] at Footnote 35 and accompanying text. Furthermore, in June 2009, the U.S. Census Bureau reported that as of October 2007, 62% of households had Internet access and 82% of those households had a high-speed connection. See United States Census Bureau Press Release CB09-84 (June 3, 2009)

shareholders. Providing an issuer's rationale for adopting the Notice and Access model would enhance a shareholder's understanding of the reason for receiving the Notice, further distinguish the Notice from the proxy card, and is unlikely to have any influence on a shareholder's voting decision.

III. The Commission should shorten the 40-day Notice mailing requirement.

The Commission has expressed that the goal of the 40-day deadline is to ensure that shareholders have sufficient time to request and receive paper copies of proxy materials if they so desire. In our experience, shareholder requests generally have been made within a few days after receipt of the Notice. Thus, the 40-day deadline does not seem necessary to ensure that shareholders have access to paper materials with sufficient time to cast a well-informed vote. In addition, as noted in the National Investors Relations Institute letter ("NIRI"), 16% of respondents to a NIRI survey encountered difficulty with the 40-day mailing requirement.²

Migrating to a 30-day deadline for mailing the Notice would strongly encourage issuers deterred by the 40-day mailing requirement to utilize the Notice and Access model and provide additional time to current users of the model without in any way interfering with shareholders' ability to receive paper copies of proxy materials in a timely manner³. The Commission could create staggered deadlines for issuers as it deems appropriate. For example, the Commission could provide that any issuer that filed preliminary proxy materials at least 45 days prior to its intended meeting date would be able to use the Notice and Access model while the 30-day period would apply if an issuer is not required to file a preliminary proxy statement.

IV. The Commission should not impose additional limitations regarding the use of the Notice and Access model.

The Commission should continue to allow issuers to decide how to balance their use of the Notice-only and full set delivery methods since issuers are best positioned to weigh the costs and benefits of each delivery method for each of its shareholders. In making this determination, issuers consider a variety of factors, including:

- A. costs and expenses;
- B. prior voting patterns;
- C. differences between record holders and beneficial holders; and
- D. size of shareholdings.

Over time, issuers will develop best practices that maximize shareholder participation. Issuers are motivated to have each of their shareholders vote at every meeting and, therefore, issuers should make the determination about how best to achieve this important objective.

² See Comment Letter to SEC File No. S7-22-09 dated November 16, 2009 from National Investors Relations Institute.

³ We note that even a 30-day notice period could be longer than may be required under state law.

Conclusion

We appreciate the opportunity to comment on the Proposed Rules and are available to provide you with further information (including additional anecdotes from practitioners and issuers' counsel) if you would find it helpful.

Respectfully submitted,

Corporate and Securities Law Committee
Association of Corporate Counsel

By: 
Arden T. Phillips, Chairman