



November 18, 2009

Via e-mail: rule-comments@sec.gov

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

Re: File Number S7-22-09, Amendments to Rules Requiring Internet Availability of Proxy Material

Dear Ms. Murphy:

BNY Mellon Shareowner Services (“BNYM SOS”), a leading provider of shareholder and related services, is pleased to submit its comments to the Securities and Exchange Commission (the “Commission”) on the proposed amendments to the Notice and Access (“N&A”) rule. BNYM SOS is the transfer agent for over 2,000 public companies and services approximately 20 million shareholders. BNYM SOS is a full service transfer agent, including all aspects of the annual meeting process for over 1,485 meetings, including financial printing, proxy distribution, tabulation, solicitation, inspector of elections, web hosting, and all N&A services. BNYM SOS is pleased that the Commission is considering amendments to the N&A rule, making this valuable service even more effective and addressing the need to mitigate reduced retail voting.

BNYM SOS’s experience with companies that use N&A shows that it has been successful in moving the proxy process into the information age, saving issuers significant printing and mailing expense, and contributing positively to the environment. BNYM SOS shares the Commission’s concern, however, that lower voting returns have been an unintended consequence of the N&A rule change. We believe that the Commission’s proposed amendments will have the intended impact of improving retail voting rates while retaining N&A’s demonstrated benefits.

Our experience with voting results over the first two-years of N&A has demonstrated that there has indeed been a reduction in voting from registered shareholders. In our case, for 151 companies that used the Notice only model over the past two years, the average percentage of shareholders that submitted votes decreased from approximately 10% to 7%. We also found that issuers using a hybrid or stratified mailing and/or sending a second mailing, which is permitted by the current rule, were able to mitigate this reduction. This is why we are confident that the proposed additional shareholder communication and flexibility in the Notice of Internet Availability of Proxy Materials (“Notice”) language would result in increased proxy voting.

With respect to certain other questions presented in the proposal, we hope the following responses may be helpful to the Commission:

Has the use of the N&A model made proxy material more or less accessible? Will flexibility in design of the Notice make it clearer?

We are finding that some shareowners are returning the Notices in their own envelopes, marked with hand-drawn proposal voting boxes, with votes executed. This illustrates that those shareowners understand that the Notice contains voting instruction information, but are confused as to how to execute a vote. As for those who understand that there is an Internet component, our experience shows that while approximately 76% of shareowners are voting via Internet, less than 5% of registered shareholders view the online materials.

Regardless of existing levels of comprehension, an increased flexibility in the design of the Notice may result in further clarification of the accessibility of proxy materials to shareholders who may currently be confused by the process. Additionally, by allowing the inclusion of educational materials with the initial Notice mailing, issuers and agents could better inform the shareowners of the N&A process.

Does permitting issuers to choose to which shareholders to provide notice-only and full set delivery affect voting rates? If so, how are issuers exercising their discretion over full set delivery and are they doing it appropriately?

Our experience shows that issuers who adopt the hybrid method of N&A delivery realize less of a decrease in voting returns. Another method employed by issuers we work with is the use of a second mailing, which has also resulted in less of a decrease.

The issuers who have used stratified mailings have done so based upon share ranges. Using this method, issuers can still enjoy significant N&A cost savings while allowing those shareholders with large share positions, who have more of an economic incentive to vote, to receive a traditional package.

These strategies, coupled with the proposed flexibility in language on the Notice-only mailing, may result in an increase in voting to pre-N&A levels.

Are there additional requirements that could be made to increase voting?

We would favor allowing issuers and their agents to e-mail all shareholders with the voting notification, not just those who have consented to electronic distribution. This could be done in addition to a physical mailing. Just as with the current Notice-only mailings, the e-mail would include instructions for requesting a full proxy package and may drive an increase in voting.

Should we prohibit using N&A model if the vote decreased?

In our experience, year over year voting has been trending lower for some time now, even before the adoption of the N&A rule. With N&A, that downward trend has somewhat accelerated, but even without N&A, that decrease would likely continue. It is our view that the complexity of the entire proxy process contributes to the negative trend in retail voting. Efforts under consideration by the Commission to simplify this process, we believe, would have a much more positive impact on voting than any prohibition on N&A.

Should we permit the Notice to be accompanied by materials to explain the process?

We would suggest that there be very few restrictions on what can be included with the Notice, as this will allow issuers and their agents to creatively address the educational and educational needs of the shareholders. Collectively, issuers and agents will arrive at best practices that can then be shared through industry groups, such as the Securities Transfer Association, National Investor Relations Institute and Society of Corporate Secretaries & Governance Professionals.

Has the N&A model lowered costs for issuers? Have any costs increased?

We estimate that our clients who used the notice only model have saved approximately \$23 million over the first two years of the rule. While there is an increased cost for setting up websites, electronic voting links, and fulfillment, these costs are a fraction of the savings realized by employment of Notice mailings.

Respectfully,

Robert Folinus
Vice President