



# MUTUAL FUND DIRECTORS FORUM

*The FORUM for FUND INDEPENDENT DIRECTORS*

March 3, 2006

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

Re: Proposed Rulemaking Regarding the Internet Availability of Proxy Materials, File No. S7-10-05

Dear Ms. Morris:

The Mutual Fund Directors Forum (“the Forum”)<sup>1</sup> appreciates the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (“Commission” or “SEC”) respecting the “Internet Availability of Proxy Materials.”<sup>2</sup>

The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors and serves as an independent vehicle through which Forum members can express their views on matters of concern.

## *Comments*

The proposed rule would permit issuers, at their option, to deliver “proxy materials” to their shareholders by posting the materials electronically and providing their shareholders with a written notice explaining how to access the materials and how to obtain a paper copy of the materials. Permitting issuers to deliver disclosure materials in this manner would represent a

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<sup>1</sup> The Forum’s current membership includes five hundred ten independent directors, representing sixty four independent director groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

<sup>2</sup> Proposed Rulemaking: Internet Availability of Proxy Materials, Exchange Act Rel. No. 52926 (Dec 15, 2005) [70 FR 74598 (Dec. 15, 2005)] (“Release”).

fundamental shift away from a system that, for the most part, relies on delivery of paper-based materials and requires a shareholder's affirmative assent before the materials can be delivered to a shareholder electronically.

As proposed, the rule would permit issuers, including investment companies, to rely on the new delivery option. The Commission has, however, requested comment on whether certain types of issuers, including "[open-end] mutual funds, closed-end funds ... and other investment companies should be permitted to use the 'notice and access' model."<sup>3</sup> As outlined below, we urge the Commission (1) not to exclude mutual funds and other investment companies from the scope of the rule, and (2) to require that independent directors give their approval before a fund relies on the notice and access model.

### *Mutual Fund Shareholders Should be Permitted to Share in the Benefits of Electronic Delivery*

Unlike operating companies, most mutual funds do not solicit proxies annually. However, when they do solicit proxies, it tends to be with respect to an event that is of fundamental importance to the fund and its shareholders. It is, thus, critically important that fund shareholders receive and consider their proxy solicitations. We believe that the use of the Internet may facilitate this process.

We remain conscious of the fact, however, that in contrast to many operating companies, which have a large base of institutional and other sophisticated shareholders, fund shareholders tend to be almost exclusively retail investors who are using mutual funds as a means of saving for their retirement, their children's educations and other important life events. Larger and more sophisticated investors are likely to have ready access to the skills and technologies necessary to handle electronic disclosure; the individuals who invest in funds may not. Electronic delivery, even when combined with written notice of how to obtain the materials in paper form, may create great difficulties for some fund shareholders and many of them might continue to prefer to receive proxy materials in paper format. While we do not believe that this possibility should prevent the Commission from including funds in its initiative on the electronic delivery of proxy materials, we do encourage the Commission to consider the potential impact of that initiative on fund investors who may not have easy access to and familiarity with the Internet.

Ultimately, we agree with the Commission's statements in the Release that the Internet has become a more pervasive part of daily life, and that an increasing number of individual investors are using it to research and monitor their investments, including their mutual fund investments. Indeed, many of the funds on whose boards our members serve offer their shareholders electronic versions of disclosure materials, such as prospectuses, and permit fund shareholders to manage their accounts via the Internet.

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<sup>3</sup> For purposes of this letter, we use the term "mutual fund" to refer to open-end funds. We also note that the Commission's proposal may raise more significant issues for closed-end mutual funds, especially those that are exchange-listed, because of other regulations that require them to solicit proxies more frequently than open-end funds.

Moreover, as described in the Release, increased use of electronic delivery has the potential to save mutual funds and their shareholders significant costs. These savings will accrue to all fund shareholders. In addition, although not the subject of this rulemaking, in the long run, new technologies may permit the development of materials that facilitate shareholder absorption of critical information by, for example, hyper-linking detailed disclosure to summary or graphic presentations, linking video and audio with text, or having interactive examples to illustrate text-based explanations.

Mutual funds and their shareholders should, therefore, be permitted to share in the benefits of electronic delivery. We support including mutual funds and other types of investment companies within the types of issuers able to rely on the rule. As noted above, however, this should be considered in light of the rights and expectations of shareholders who wish to continue to receive paper delivery.

*Fund Directors Should Affirmatively Approve Reliance on the Rule*

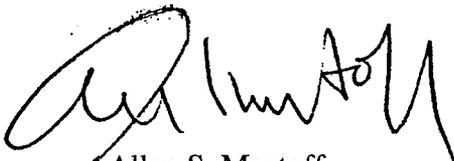
A fund's decision to rely on the rule is one that should be undertaken carefully. In particular, any fund that relies on the rule will need to monitor closely the adequacy of the notice to assure that its shareholders benefit from electronic delivery, which would be evidenced, in part, by the extent to which the shareholders participate in the actual proxy voting process. The independent directors of funds, who solely represent the fund's shareholders, are the group best positioned to monitor whether a "notice and access" approach to document delivery is beneficial and in the best interest of their fund shareholders. The Commission should, therefore, require that a fund's independent directors, in the exercise of their business judgment, approve any decision by a fund to rely on the rule.

In sum, clarifying the role of independent directors is critical to ensuring that any shift in the manner in which disclosure materials are delivered to fund shareholders will, in fact, work to the benefit of fund shareholders. While reducing the costs of document delivery is a laudable goal, it should be secondary to the goal of improving the accessibility and usability of disclosure. Independent directors have a key role to play in ensuring that these goals are achieved.

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We appreciate this opportunity to comment on this proposal and would be pleased to discuss any of the comments made in this letter.

Respectfully submitted,



Allan S. Mostoff  
President  
The Mutual Fund Directors Forum