

American Federation of Labor and Congress of Industrial Organizations



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January 11, 2006

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

RE: Internet Availability of Proxy Materials (File Number S7-10-05)

Dear Ms. Morris:

I am writing on behalf of the American Federation of Labor and Congress of Industrial Organizations to comment on the SEC's proposed alternative method for furnishing proxy materials to shareholders based on a "notice and access" model (the "Proposed Rule"). While we commend the SEC for its determination to empower shareholders to take full advantage of the Internet, the Proposed Rule as currently formulated will have a detrimental effect on shareholder votes. In order to preserve informed voting by shareholders, the Proposed Rule should be amended to require that proxy cards be furnished together with, and through the same medium as, the proxy statement.

Thoughtful and informed proxy voting by shareholders is critical to effective corporate governance and the long-term performance of public corporations. Regulation 14A of the Securities Exchange Act of 1934 requires that any party conducting a proxy solicitation must provide a written proxy statement containing the information specified in Schedule 14A. This disclosure ensures that shareholders have the information necessary to exercise informed judgment when acting by proxy. 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.

Requiring that the proxy card be delivered at the same time and by the same means as the proxy statement may provide additional cost savings to issuers. Specifically, the electronic delivery of proxy cards with proxy statements will encourage shareholders to vote over the Internet. It stands to reason that if there are significant cost savings to be realized by delivering proxy statements electronically, even greater cost savings can be realized by making electronic voting the default standard. Moreover, even if the proxy card is delivered electronically, shareholders could still have the option to print their proxy card and return it by mail or vote by telephone, as is currently the practice.

Electronic voting by shareholders is not a radical concept and could easily be made the default standard. If individual retail shareholders are ready to receive proxy statements electronically via the

Internet, they are ready to vote by the same medium. In fact, electronic voting is already in widespread practice. Today, most institutional investors are voting electronically through ADP's ProxyEdge service. In addition, many street-side individual investors are voting electronically through ADP as their intermediary via the Internet at <http://www.proxyvote.com>. Many issuers also offer online voting and electronic delivery of proxy materials to their registered shareholders.

As currently formulated, the Proposed Rule will permit a corporate issuer or other soliciting party to send a "Notice of Internet Availability of Proxy Materials" (the "Notice") and a paper proxy card to shareholders by mail. In effect, the proxy statement and proxy card will be delivered separately and in two different media. We believe that separating the proxy card from the proxy statement will dramatically increase the likelihood of individual shareholders voting without reviewing the disclosure. While delivering the proxy statement with the proxy card concurrently and in the same medium cannot guarantee that all shareholders will read the disclosure, separating the two will tacitly endorse this practice.

It is a fundamental tenet of U.S. securities law that shareholders should review proxy statement disclosures before voting by proxy. Proxy statements contain vital information that informs shareholders' voting decisions, including disclosure of executive compensation data, director biographies and conflicts of interest, and the text of Regulation 14a-8 shareholder proposals. Separating the proxy statement from the proxy card will send an implicit message to individual shareholders that the proxy statement is not consequential. To the contrary, proxy statement disclosure is particularly important for individual shareholders who may not have access to third-party proxy voting advisory services.

Separating the proxy card from the proxy statement will transfer the burden of conveying proxy disclosure from issuers to shareholders. If adopted in its current form, the Proposed Rule will create a two-step process for shareholders to cast informed votes. It will be incumbent on shareholders to locate and download the proxy statement on the Internet, or make a timely request for paper materials. Shareholders who prefer to receive paper materials would be required to opt-out of electronic delivery for every vote, year after year, at every company. This repetitive process may lead to lower voter turnout at annual shareholder meetings. For this reason, the Proposed Rule should be amended to allow shareholders to permanently indicate their delivery preference for all proxy materials, including the proxy card.

Separating the proxy card from the proxy statement will have a disproportionate impact on individual investors. The physical delivery of paper proxy statements and proxy cards is far more common for individual shareholders than for institutional investors. ADP reports that over 70 million investors have not opted-in to electronic delivery. Moreover, of the 13.1 million investors who have consented to electronic delivery, 2.4 million have subsequently opted-out. This stands in stark contrast to proxy voting by most institutional investors. Through ADP's ProxyEdge service, institutional investors can receive proxy statements and annual reports electronically, and cast their proxy votes electronically.

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Separating the proxy card from the proxy statement will open the proxy solicitation process to potential manipulation by issuers and other parties. The Proposed Rule states that the Notice "must contain...[a] clear and impartial identification of each separate matter intended to be acted upon and the soliciting person's recommendations regarding those matters, but no supporting statements" [§240.14a-3 (g)(2)(iii)]. However, these supporting statements could be provided as supplemental materials by mail. We are concerned that this type of selective disclosure in the absence of concurrent delivery of proxy statements with proxy cards will be detrimental to the integrity of the proxy voting process.

For example, the Proposed Rule as currently formulated will create an uneven playing field for the proponents of Regulation 14a-8 shareholder proposals. Under Regulation 14a-8, shareholders may submit 500-word proposals for inclusion in company proxy statements. Under the Proposed Rule, shareholders would receive a Notice that would include a brief description of the 14a-8 proposal and the issuer's voting recommendation. Even if these proposal descriptions are impartial, they are inadequate for shareholders to form an informed opinion without reviewing the proxy statement. Moreover, issuers could send their 14a-8 opposition statements to shareholders as a supplemental mailing as part of their proxy solicitation efforts.

The best way to ensure that shareholders have access to the necessary disclosure when making voting decisions is to require that proxy cards be delivered together with, and through the same delivery means, as the proxy statement. Those who maintain that shareholders are ready for electronic delivery of proxy statements but not electronic delivery of the proxy card are really advocating a return to proxy voting as it existed before the Securities Exchange Act of 1934. Separating the proxy card from the proxy statement will contribute to the disempowerment of individual shareholders to the advantage of corporate insiders. Such an outcome is unacceptable given the corporate scandals over the past several years that highlighted various weaknesses in many issuers' corporate governance.

I respectfully urge the SEC to amend the Proposed Rule to require that proxy statements be delivered at the same time and by the same means as the proxy card. Please contact the AFL-CIO Office of Investment at 202-637-3900 if we can be of further service.

Sincerely,



Richard L. Trumka

RLT/me
opeiu #2, afl-cio

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth