



November 1, 2018

By email to rule-comments@sec.gov

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. 4-725 SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields,

Mediant Communications Inc. appreciates the opportunity to submit this letter regarding certain U.S. proxy voting issues in advance of the upcoming SEC Staff Roundtable on the Proxy Process. We previously commented on the mechanics of the proxy voting process.¹ In this letter we will focus on retail shareholder participation in the proxy voting process and offer suggestions on how the rate of participation may be increased.

Mediant delivers investor communications and technology solutions to leading banks, brokers, corporate issuers, funds and investment advisors. We are a premier provider of proxy services which include the distribution of electronic and printed proxy materials and processing votes of beneficial owners for our bank and broker clients. We perform similar functions for corporate and mutual fund issuers and their registered shareholders, as well as act as master tabulator for shareholder meetings. In this role, we are responsible for validating and applying the votes cast. Given our experience in requesting votes from the retail shareholder population, we have seen firsthand the continued difficulty in increasing and even maintaining the level of retail shareholder participation. We have views on why this is the case and suggestions for countering this trend.

Historically, retail shareholders vote at a relatively low rate – averaging less than 30% overall, year-to-year. This is understandable. In the U.S. proxy voting is considered a right, not a responsibility, which may lead to less than optimal understanding of the value of each shareholder's vote. In addition, it is often the case that their financial stake in the company involved is modest, both overall and as a part of their total financial holdings. Most meetings are uncontroversial and small retail shareholders can rationally conclude that their votes are not needed or important to the outcome. If they are concerned about the prospects of the company, these small retail shareholders can generally protect themselves by selling their shares, often referred to as "voting with their feet."

In the last decade, we have seen a rapid decline of retail shareholder participation. We believe this can mostly be attributed to the adoption of Exchange Act Rule 14a-16, which went into effect in July 2007. The notice and access rule gives corporate issuers an alternative method to full set paper solicitations to request retail shareholder votes. While this has been beneficial to issuers, by reducing their mail and print costs, one unforeseen result has been the rapid decline of retail voting. We believe there are a number of reasons for this, including that: (i) the notice itself is very limited in design and content; (ii) there are mandatory text requirements; (iii) multiple instructions prevent a clear call to action; and (iv) font sizes and styles lead to a poor, distracting layout.

¹ Letter from Mediant to the SEC, dated October 24, 2018.



We believe that retail voting participation rates can be increased for all solicitation channels by increasing the effectiveness of the communication used to solicit the vote. With demographics and technology rapidly changing, issuers should be given the freedom to use more current communication methods. Regulations should also keep pace with these current communication methods and support the issuers' ability to effectively communicate with their shareholders.

We recommend that the SEC revisit Rule 14a-16 and give issuers more flexibility in how they communicate with their shareholders:

1. Allow issuers to include a letter to shareholders and/or fact sheet which includes the salient points of the issues and the board recommendation;
2. Allow issuers to attach a ballot and Business Reply Envelope with the notice;
3. Allow issuers to include a telephone number for telephone voting;
4. Encourage issuers to leverage engaging visuals to enhance readability and highlight key information, in both print and online media; and
5. Encourage issuers to educate shareholders on the value of their vote.

Use of Additional Materials

We believe that a useful change to the proxy voting process would be to allow issuers to include additional material in or with the notice, to enhance understanding and increase the likelihood that the shareholder will respond. A shareholder letter or fact sheet (or both) that summarizes and highlights the material provided in the proxy statement would be an effective way to let the shareholder understand what is at stake, while underlining the ability to obtain more in-depth information by accessing the full proxy statement online. If the issuer provides this type of material, we suggest they also be permitted to include a ballot or voting information form with the notice, so that shareholders have the option to vote immediately without calling to get additional documents or logging on to a website to vote. Indeed, we suggest that a highlight summary/fact sheet also be included in an emailed solicitation, as well as in a full set paper delivery. Shareholders put off from voting by the lengthy proxy statement would be more likely to vote if the process is streamlined, relevant facts can be summarized (while still providing full detail in subsequent documentation) and the mailing is immediately actionable. The recommended format allows for full disclosure and reduces expenses associated with full set mailings.

Leverage Engaging Visuals

We believe it is important that issuers be permitted and encouraged to use design and technology capabilities available today to present information in a way that draws in shareholders and enhances their understanding of the information presented. It is widely accepted that images, graphics and videos capture readers' attention and aid their recollection more than printed words. Videos obviously are limited to electronic communications, but even a mailed notice can contain compelling graphics and other images. Today's communications rely heavily on visuals to engage an audience. This is especially true for millennials who have grown up with the internet. Issuers soliciting proxy votes are going to have to "keep up" if they wish to increase retail shareholder participation, especially with younger generations.

At the very least, issuers should be encouraged to avoid using notices that are designed, packaged and delivered in ways that lead the recipient to conclude that it is junk mail, which merits disposal without reading, or without reading more than superficially. Issuers need to be smart about how to entice shareholders to vote and they need to be given the freedom to use their creativity to communicate effectively.

Educate Shareholders on the Value of Their Vote

As referenced above, we believe a portion of retail shareholders do not vote because they believe their vote is unimportant. We understand from professional proxy solicitors, that once they have explained to shareholders why every vote does count, those shareholders do in fact vote.



Issuers should be permitted and encouraged to include value statements on the notice and on proxy solicitation materials. Such statements can focus on the role and responsibility of a shareholder, the ways in which their votes impact corporate policies, and even practical side benefits, such as ensuring that their accounts do not appear to be dormant and thus subject to treatment as unclaimed property.

Conclusion

We appreciate that the SEC has been grappling with these issues for more than a decade. When notice and access was first proposed, it included the ability to send a ballot or voting form with the notice, although this was changed in the final rule.² Given initial experience with notice and access that suggested the form required was too rigid, the SEC amended the rules in 2010 to permit some additional flexibility, although it continued to prohibit including a ballot or VIF with the notice,³ and in the “Proxy Plumbing” Concept Release the Commission asked for comments on further potential changes to improve shareholder response.⁴

Unfortunately, the amount of flexibility permitted under the 2010 amendments has proven to be insufficient, and the Commission has not, to this point, taken any further steps, such as those discussed here. We are hopeful that the steps taken by the Commission in the approval of rule 30e-3 earlier this year⁵ signal a willingness to entertain additional changes that can improve retail shareholder voting participation. As expressed in this letter, however, we believe that additional changes will be helpful to further increase participation.

We are concerned that most issuers have become accustomed to approaching proxy-related communications in a very conservative and unimaginative way, as a result of the initial 2007 approach to notice and access, which constrained notices severely. It will take not only permission but also encouragement to convince issuers to become more creative in their approach. Nonetheless, if a few interested issuers take the initiative and are able to point to some level of success, we are hopeful that more effective solicitation materials will become a successful standard.

* * *

Thank you for the opportunity to comment on the proxy voting process. If we can answer any questions or provide any additional information, please let us know.

Very truly yours,

A handwritten signature in black ink that reads "Sherry M. Moreland".

Sherry Moreland
President & Chief Operating Officer

cc: The Honorable Jay Clayton, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
William Hinman, Director, Division of Corporation Finance
Dalia Blass, Director, Division of Investment Management

² SEC Release Number 34-55146, 72 Fed. Reg. 4148, 4153 (January 29, 2007).

³ SEC Release Number 34-61560 (Feb. 22, 2010).

⁴ SEC Release Number 34-62495, 75 Fed. Reg. 42982, 43006 (July 22, 2010).

⁵ SEC Release Number 34-83380 (June 5, 2018).