

March 30, 2007

VIA EMAIL

Ms. Nancy M. Morris
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: File No. S7-03-07 Universal Internet Availability of Proxy Materials

Dear Ms. Morris:

The American Business Conference (ABC) is a coalition of CEOs of midsize growth companies founded in 1981 by Arthur Levitt, Jr. and chaired by Alfred West, CEO of SEI Investments, Oaks, Pennsylvania.

We are writing to comment on the Commission's proposed rule regarding the universal Internet availability of proxy materials.

General Comments

In February 2006, ABC submitted a comment letter on the SEC's original proposal for Internet availability of proxy materials, commonly known as notice and access.¹ In it, we expressed our support for the Commission's intent to lower the cost of the proxy process. However, for a variety of reasons described in that letter, we suggested that the cost savings contemplated by the proposal might not be realized, that its implementation could unduly burden smaller public companies, and that it might discourage shareholders from exercising their franchise.

¹ Letter of John Endean to Nancy M. Morris, Secretary, United States Securities and Exchange Commission, Re: File No. S7-10-05, February 16, 2006.

As adopted, the Commission's Notice and Access Rule permitted issuers to implement the notice and access model on a voluntary basis, beginning on July 1, 2007. This approach allows companies and their shareholders to decide for themselves if Internet availability of proxy materials is in their interest. The assumption appeared to be that once the utility and efficiency of notice and access became clear, other issuers would follow along.

In its new proposed rule, *Universal Internet Availability of Proxy Materials*, the Commission moves away from a purely voluntary approach to notice and access implementation. Instead, by January 1, 2008, the Commission would make it mandatory for large accelerated filers to post all annual meeting materials on an Internet website and permit shareholders to vote electronically, either on the website or via a dedicated, toll-free telephone line. Shareholders would be notified of this alternative to paper delivery and proxy execution and would decide for themselves if they wished to use it even if the company chose to continue to send all materials in paper format. Smaller public companies would have to be similarly "Internet ready" by January 1, 2009.

Coming so soon on the heels of the Notice and Access Rule, this new proposal places ABC and other interested parties in the difficult position of commenting on the merits of a new Commission mandate absent any data or experience with voluntary notice and access. We cannot begin to determine the validity of the concerns we raised in our February 2006 letter until the end of the Fall 2007 "proxy season" when, presumably, the experience of companies that have voluntarily adopted notice and access can be evaluated. Indeed, it is not clear that even then there will be much usable data, since the main proxy season is in the spring and the number of pioneering issuers using notice and access may well be small.

This situation contrasts sharply with Commissioner Casey's recent observations about Commission rulemaking in a speech before the Practising Law Institute.² In its rulemaking function, Commissioner Casey said the SEC must have "a full appreciation of the economic implications of various policy choices" while fully estimating "the costs and benefits associated with our actions." "Investors and our markets" she observed, "deserve a more rigorous analysis than merely following gut instincts or embracing the 'it feels good, so it must be right' approach."

² Speech by Commissioner Kathleen L. Casey before SEC Speaks, February 9, 2007.

In our view, “rigorous analysis” of the notice and access model cannot be completed by January 1, 2008. Consequently, ABC believes that implementation of mandatory notice and access for large accelerated filers should be put off for a year in order to permit the gathering and evaluation of data from the Spring 2008 and Fall 2008 proxy seasons.

To that end, we further recommend that, for 2008, the Commission launch a pilot program, involving a subset of the largest accelerated filers, who would be asked to adopt universal notice and access as a means of testing the validity of the proposal. Such a pilot program would insure that enough data will be available to prove the concept of the notice and access model. This is precisely the sort of “controlled experiment” Commissioner Atkins recently advocated for Commission rulemaking. The “beauty of a controlled experiment” he said, “is that it enables you to see what happens...before deciding whether to apply a rule across the board.”³ We agree.

Smaller Public Companies

ABC applauds the Commission’s decision to delay the application of its proposed rule for smaller public companies.

That said, it is still important to point out that the notice and access proposal has not been “scaled” to take into account the limited resources of smaller public companies. Under the Commission’s proposal, companies with minimal revenues and limited in-house expertise in information technology must provide the same level of shareholder service as a *Fortune* 50 corporation.

We suspect that the typical smaller public company will outsource the creation and management of its proxy-related website and electronic voting regime. Our back-of-the-envelope calculation suggests that the annual cost of outsourcing could easily exceed \$5,000 and might be as high as \$10,000. Assuming that there are between 7272 and 7680 smaller public companies, the total annual cost of the notice and access model would range between \$36 million and \$76 million.⁴

³ Speech by Commissioner Paul S. Atkins before the National Association for Business Economists, March 13, 2007.

⁴ The source of this estimate is the Final Report of the Commission’s Advisory Committee on Smaller Public Companies, April 23, 2006, Appendix E, page E-3. According to this report, based on 2005 data, 7272 U.S. publicly traded companies have a market capitalization below \$700 million and 2156 such companies have a market capitalization above \$700 million. It is fair to assume that

These costs are significant. Indeed, the effect of mandating Internet access may well be to force smaller companies that would otherwise prefer paper distribution of proxy materials to abandon it as a way to offset some of the costs of electronic availability. In other words, economics would drive smaller companies to adopt the Notice and Access Rule whether they liked it or not. This is precisely the sort of distortion in decision-making that results from an “unscaled” mandate.

Conclusion

To summarize, ABC respectfully recommends that the Commission:

- defer the date for mandatory adoption of notice and access by large accelerated filers until January 1, 2009;
- initiate a pilot program for 2008, comprising a subset of the largest accelerated filers, to test the concept of notice and access; and,
- develop ways to “scale” the notice and access model for smaller public companies so as to reduce the cost of compliance.

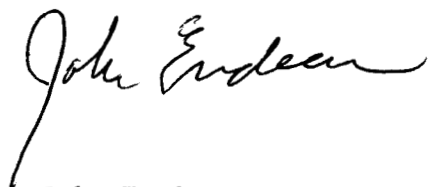
Since the current proxy process works quite well and has already yielded many cost savings from electronic communication, ABC does not believe that the changes we have recommended would unduly delay the benefits that the Commission believes are embedded in the notice and access model. In fact, those changes may yield further innovations.

Across many industries and professions, we are witnessing a movement away from the printed display of information to its digital counterpart. This development is especially significant for the Commission’s role in protecting the investor. Particularly with the advent of Extensible Business Reporting Language (XBRL), which the Commission has wisely championed, the United States is on the verge of an information revolution in the way companies report their financial results and in the way shareholders can make use of those reports. To that end, ABC believes a more measured approach to mandating

some of the companies with a market capitalization of between \$700 million and \$1 billion have a public float of less than \$700 million and are not large accelerated filers. Therefore, we estimate that the number subject to the later deadline for mandatory notice and access falls within a range of 7272 and 7680 firms.

the notice and access model will, ultimately, have the effect of speeding that revolution.

Sincerely,

A handwritten signature in cursive script, reading "John Endean". The signature is written in black ink and is positioned above the printed name and title.

John Endean
President