

Kenneth L. Altman
President

60 E. 42nd Street
New York, NY 10165
Tel: (212) 681-9600
www.altmangroup.com

November 20, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Via e-mail: rule-comments@sec.gov

Re: Proposed “Amendments to Rules Requiring Internet Availability of Proxy Materials” (“Notice and Access Model” [File Number S7-22-09])

Dear Ms. Murphy:

We commend the Commission for recognizing that there are structural problems with the current Notice and Access (N&A) model, and for seeking input to improve it. Changes have to be made to encourage wider use of N&A, adapt the process to reflect retail investor behavior, and eliminate aspects of the current model that effectively exclude large numbers of smaller companies from gaining any benefit from using N&A. We welcome all of the SEC’s proposed amendments, including provisions allowing for more flexibility in formatting and selecting the language to be used in a Notice of Internet Availability of Proxy Materials (“Notice”). Our comments below include additional proposals to increase shareholder response rates to proxy solicitations and, quoting the proposing release, “increase informed shareholder participation in the proxy solicitation process.”¹

The Commission has noted that it has “serious concerns regarding shareholder confusion and the potential that our rules may be causing a reduction in shareholder voting.” Our experience as a proxy solicitor with clients implementing notice and access has been consistent with trends indicated in data from Broadridge showing dramatically lower shareholder response rates to proxy solicitations when the Notice-only option is used. The Commission noted in the proposing release, citing data from Broadridge, concern that: “the percentage of ‘retail’ shares voted by shareholders in issuers using the notice-only option for distribution to some portion of their beneficial owners is lower than the percentage in issuers that exclusively use the full-set delivery option to provide proxy materials to their shareholders. In addition, when comparing

¹ Footnote 16 of the proposing release also commented that the “Commission has long had an interest in facilitating shareholder participation in corporate governance and in fair corporate suffrage.” “Amendments to Rules Requiring Internet Availability of Proxy Materials” (“Notice and Access Model” [File Number S7-22-09])
<http://www.sec.gov/rules/proposed/2009/33-9073.pdf>

between shareholders in issuers that used both the notice-only and full set delivery options, the response rates of retail shares voted by shareholders that received notice-only was half that of shareholders that received full set delivery. With regard to the effect on voting by retail account holders...statistics provided by Broadridge indicate even lower voting response rates for retail accounts that received notice-only instead of full-set delivery.”²

Getting to the Root of Problems Resulting From the Current Notice and Access Model

The Commission’s proposed rule changes focus on procedural issues that do not address some of the fundamental reasons why N&A sharply reduces rates of retail voter participation. In our view, the multi-step process for voting is the root of the problem. The current N&A model does not contain a mechanism for users to vote in response to initial contact. The prohibition against including a proxy card in the initial contact package is a key factor driving the decline in retail voting response rates.

In our view, the N&A model is suppressing response rates simply by adding a step to a voting process in which levels of retail engagement are already very low (institutional engagement would also likely be lower if most weren’t obligated to be fully engaged). Most retail shareholders are used to having a one-step process for participating in annual meetings and director votes. Now they are being exposed to the N&A model without either an adequate education program or simple explanation as to why the more time consuming N&A process is in their interest.

There are other factors contributing to the very low response rates to initial Notices. Not all shareholders receiving Notices are computer savvy. Moreover, not all shareholders receiving Notices have access to the Internet. A small number of shareholders are also mistakenly using the Notice forms as a Voting Instruction Form. However, we estimate that the volume of such mistaken responses is not significant enough to be considered an indicator of the success or failure of a particular design, particularly so when seen in the context of typical “error rates” (for example, with regard to the numbers of people who fail to sign proxy cards or check too many boxes, etc.). As a result, simply tinkering with the Notice form will not, in and of itself, generate a significant improvement in voting response rates.

Including a Proxy Card With Initial Notices

We propose that the SEC consider enabling issuers to send proxy cards (and business reply envelopes) along with first Notices. We believe that the voting system should be directed at providing shareholders with options suitable to engage them in the process, not additional hurdles to participation. The proxy card sent with Notices should include the following language: “I have made my decisions with full knowledge of the availability of a proxy statement.” We would also support the inclusion of a legend on Notices indicating that the form

² Ibid.

should not be used for voting on matters, and that only a separate proxy card or Voting Instruction Form should be used for submitting votes.

The SEC may also want to consider allowing the Notice and proxy cards to be accompanied by a new “short summary” of issues to be voted on (allowing excerpts from the full proxy statement filed with the SEC). This short summary would be similar in scope to the Summary Prospectus that the SEC is now permitting investment companies to send to shareholders. The “short summary” would include a link to the full proxy statement as available online, and include a note: “If you do not have access to the Internet, you can call (XXX-XXXX), after which a full copy of the proxy statement will be mailed to you within 48 hours.” Since the Commission already allows a summary prospectus to be used in place of a mutual fund’s complete prospectus, the same standard should also be applied to proxy statements.

If the Commission is uncertain about the impact of including a proxy card along with the initial Notice, then perhaps it should consider allowing companies the option of including either a proxy card (alone) or a proxy card and “short summary” of issues to be voted on together with the initial Notice. The Commission might also select several hundred companies from among those who have used N&A in 2009 in order to establish a minimum number of participants using each of three options (existing Notice only, as modified by the SEC’s proposed rule changes, a Notice and proxy card, or a Notice with both a proxy card and short summary of issues to be voted on). This approach would present an opportunity for the Commission to carefully study voting response behavior in 2010 before settling on a sustainable and effective N&A model, which could then be implemented by 2011.

Cost Structures

The Commission asked in its proposing release whether: “the notice and access model lowered costs for issuers and other soliciting persons resulting from the proxy solicitation process” and to “please quantify the costs and savings of using the notice and access model, and provide supporting data where possible.” The SEC has touched on one of the most important factors limiting use of N&A (other than the impact of N&A on rates of voting participation): a substantial share of the savings from reductions in printing and mailing costs when using N&A are paid to Broadridge as an “incremental fee” (over and above normal processing fees) imposed on those using N&A. This “incremental fee” is imposed, Broadridge publicizes, “on behalf of banks and brokers.”³ This “incremental fee” structure is detailed on the web site of Broadridge.⁴ A review of Broadridge’s fee structures shows notable inflection points in terms of marginal costs for issuers and mutual funds sending Notices to over/under 6,000 and 200,000 accounts.

The “incremental fee” dictated by Broadridge for N&A may also suppress use of the notice and access model by mutual funds. Some mutual fund proxy campaigns, which can

³ From the Broadridge site under “Notice and Access Beneficial Pricing”: “Broadridge is using the fees listed below to bill issuers and mutual funds on behalf of banks and brokers.” <http://www.broadridge.com/notice-and-access/basic.asp>

⁴ Ibid.

involve contacts with upwards of ten million retail holders, have gained substantial cost savings from N&A use. However, the “incremental fee” can *increase* the costs for some mutual fund proxy campaigns using N&A. Here’s how. Mutual fund proxy packages are generally smaller than what is mailed by companies, since they generally require less material (no annual report, and are often shorter and printed in digest size). As a result, the postal savings from N&A use are relatively minor compared to that of companies sending out larger and heavier packages. For example, one of our clients was exploring options for mutual fund proxy campaigns encompassing over 320,000 beneficial holders. The estimated potential savings of reduced mailing costs would have amounted to circa \$40,800. We estimated that Broadridge’s “incremental fee” for N&A, based on their published fee structure, would have been \$47,500 -- resulting in a loss of (\$6,700) to utilize a program that requires less labor, less material and less capital to implement. In that case, it was actually cheaper to mail a full set of materials. Indeed, many have opined that there appears to be no reasonable business case for imposing the “incremental fee,” particularly so when use of N&A is dramatically reducing labor and material handling requirements for Broadridge.

In contrast with the Broadridge pricing structure, The Altman Group bills at lower costs for issuers and mutual funds using N&A, specifically because we are mailing less material and using fewer labor hours for mailing documents than when we mail full sets of materials. While there are additional services required to implement Notice and Access (e.g., fulfillment requests, an inbound call center, website management), these costs are normally more than offset by the lower fee and the reduced costs associated with printing fewer proxy statements and annual reports/10Ks.

Diverging Interests Between Large- and Small-Cap Companies

Our experience suggests that a significant share of small-cap companies have not considered use of notice and access. This was the response before companies will be forced to confront the significant impact on director votes of Amended NYSE Rule 452 (eliminating the discretionary broker vote in director elections). Indeed, small-cap and large-cap companies may in the future have sharply differing views on the value of the notice and access model. Larger companies, which generally have a larger share of their ownership bases held by institutional investors, tend to look at N&A primarily as a mechanism for cost savings. Nor will their director votes be impacted as dramatically as small-cap companies will experience when Amended NYSE Rule 452 goes into effect on January 1, 2010. In contrast, smaller companies with generally larger retail ownership bases (as a percentage of total shares outstanding), are going to see total retail votes fall sharply next year and are, today, generally more concerned than their large-cap peers about the impact on total retail votes of N&A use and Amended Rule 452. For many smaller companies potential cost savings or environmental issues are relatively minor concerns compared to the issue of whether Boards can secure comfortable margins for director votes. Once Amended Rule 452 goes into effect, and more so if/when the SEC’s proposed rule on direct proxy access is approved next year, the cost-benefit analysis for N&A use will factor in: (1) whether a company can afford to have even fewer retail shareholders participating in

director votes in an Amended Rule 452 environment; and (2) additional costs (mailings and telephone solicitations) in order to reach levels of shareholder participation sufficient to meet company expectations for director elections.

The system should be amended to allow smaller companies to realize greater benefits from N&A use: benefits that would become far more substantial if the Commission moves, as an outgrowth of its current review of “proxy mechanics,” to eliminate the distinction between Objecting Beneficial Owners and Non-Objecting Beneficial Owners (OBOs/NOBOs). In this regard, please note that The Altman Group has recently submitted a letter to the SEC detailing “Practical Solutions to Improve the Proxy Voting System,” in which we described a more workable solution of allowing companies to request a complete list (i.e., an ABO, or All Beneficial Owners, list) of all their shareholders, but only for specific events and record dates.⁵ It is our view that use of an ABO methodology permitting direct mailings and/or telephone solicitation calls to all shareowners for annual and special meetings could substantially increase voting participation rates, and thereby encourage use of notice and access by smaller companies.

The Commission has also asked whether it should “consider adding requirements that would limit an issuer’s ability to use the Notice-only option where the issuer has experienced a decrease in shareholder participation as a result of using the notice-only option for distribution to some portion of its shareholders?” The Commission should not use the impact of N&A on retail voting as the basis for creating a mechanism to regulate retail shareowner participation through some complex formula of the sort discussed in the proposing release (e.g., “should we only allow an issuer to continue to use the notice-only option if the shares voted or the voting response rate has not decreased from the most recent issuer’s meeting when they provided all of their shareholders with full set delivery? Would some decrease, such as 10% or 20% be acceptable?”). Such rigid selection criteria can never be appropriate for all companies and situations. Companies will need options and flexibility rather than rigid criteria when working with the notice and access model.

Some small- and mid-cap companies have also noted that the time frame in which an issuer must send the Notice to shareholders (at least 40 days prior to the shareholder meeting to which the proxy materials relate) is too far in advance of annual meetings for them to have their financials and annual reports available in time. The Commission acknowledged this problem in its proposing release: “It is our understanding...that a number of issuers were discouraged from using the notice and access model due to the difficulty of meeting the 40-day Notice mailing requirement.” We recommend a change to a 30-day requirement, which would make a 10-day period for a second Notice problematic (along with keeping a two-step process before some shareholders will have a proxy card/VIF form in their hands).

While a change to a 30-day requirement would improve matters, this change alone is unlikely to have a significant impact on encouraging use of notice and access. Indeed, decisions regarding use of the notice and access model for most corporations and mutual funds come down mainly to two issues – cost savings and the impact on retail shareowner voting participation rates.

⁵ <http://www.altmangroup.com/pdf/PracticalSolutionTAG.pdf>

Conclusion

The Notice only option is still a relatively new procedure and will take years, if ever, to become a standard practice among companies with relatively small numbers of retail shareholders. Indeed, many smaller companies are unlikely to ever use notice and access following the implementation this coming January of Amended NYSE Rule 452 (except perhaps in an ABO environment). Even so, no case can be made for eliminating notice and access. We have seen use of N&A provide substantial benefits not only to companies with very large shareholder bases, but also selected mutual funds and some mid-cap companies using the option after careful consideration of all the costs and consequences. Decision-makers at the companies and mutual funds adopting N&A have generally factored in lower retail voting participation rates into their decision-making on whether to use N&A. The careful and selective use of N&A, e.g., a combination of Notice only and full set deliveries, has been highly valued by companies seeking to lower expenses around routine annual meeting agendas.

We believe that the primary “problem” targeted in the SEC’s proposing release (“a reduction in shareholder voting”) results mainly from the fact that many shareholders want, and expect after a lifetime of familiarity with a one-step voting process, to be able to vote in response to an initial contact package. If institutional investors, most with clearly defined fiduciary obligations to numerous other parties, are allowed to simplify their voting process by outsourcing responsibilities to be informed about what they are voting on to third-party proxy advisory firms, then no shareholder should have to face a higher regulatory burden (one requiring additional steps) before they can receive a proxy card/VIF in their hands. The Commission should consider giving companies an option to include a proxy card (and business reply envelope), and possibly a “short summary” of the proxy statement, along with the initial Notice.

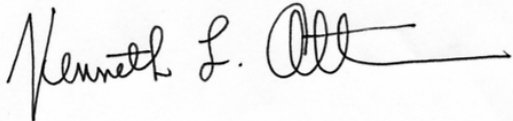
The Commission is already considering a range of major changes to processes that have been in place for generations, and is now moving quickly to reform the relatively new notice and access model. It is our view that in order to meet the challenges presented by the current N&A model the Commission should now consider allowing a proxy form to be mailed to owners as part of the initial Notice package, and not just as part of a second Notice mailing. The combination of first Notice packages with proxy cards, along with potential reforms next year of certain “proxy mechanics,” in particular changes to the OBO/NOBO system, will go a long way towards reinvigorating retail shareholder participation in the proxy voting process.

The inclusion of proxy cards in initial Notice mailings would also work to justify Broadridge’s current practice of charging for a full set proxy distribution, as well as support the case for eliminating the “incremental fee” for N&A in favor of a cost structure related to shareholder requests under N&A. This is a cost structure that would be more realistic than the one currently being employed by Broadridge. If Broadridge is correct that the fees they are charging are tied, in some respect, to the brokers and banks, then the SEC should examine and discuss with the NYSE ways to eliminate any unfair billing practices.

We also urge regulators to consider advancing a range of broad-reaching education programs to inform retail shareowners on the proxy voting process. The SEC should promote more than just its current proposal to allow “issuers and other soliciting persons to accompany

Notices with explanatory materials regarding the process of receiving and reviewing proxy materials and voting.” In addition to such a rule change, the Commission should, for example, consider funding a sustained mailing and outreach campaign to all current shareowners in order to drive them to the Commission’s www.investor.gov website. The SEC should also mandate that the NYSE, as well as the banks and brokers who share in the proceeds of that “incremental fee” from Broadridge, be obligated to fund a multi-year education effort (e.g., by including educational materials on the proxy voting process in monthly statements to clients).⁶

Sincerely,

A handwritten signature in black ink that reads "Kenneth L. Altman" followed by a stylized flourish.

Kenneth L. Altman
President
The Altman Group, Inc.

⁶ We also discussed this proposal in a letter submitted to the SEC on October 21, 2009, in which we detailed “Practical Solutions to Improve the Proxy Voting System.” This letter is available at <http://www.altmangroup.com/pdf/PracticalSolutionTAG.pdf>.