

JONES DAY

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October 3, 2018

Via Electronic Delivery

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Mr. Brent Fields, Secretary

Re: Petition for Rulemaking Regarding Extension of Notice and Access to
Materials related to a Business Combination

Ladies and Gentlemen:

Jones Day respectfully submits this petition to the Securities and Exchange Commission (the "Commission") requesting that the Commission initiate a rule change to amend Rule 14a-16(m) under the Securities Exchange Act of 1934 [17 CFR 240.14a-16(m)] in order for the notice and access provisions to become applicable to business combinations as well as transactions for cash consideration requiring disclosure under Item 14 of § 240.14a-101.

Background

In 2007, the Commission adopted "e-proxy" or "notice and access" rules. These rules allow companies to send a one-page notice that the materials are available electronically instead of a full package containing a proxy card, annual report and proxy statement.¹ The voluntary notice and access rules do not however apply to proxy materials relating to a business combination. At the time of adoption, the Commission noted in Release Nos. 34-55146; IC-27671; File No. S7-10-05 (the "Release") that these transactions are extraordinary events, typically involving lengthy and complex documentation. Commentators nonetheless noted that this model should be extended to these transactions,² in particular as "even more savings may be realized by extending the model to such larger documents." The Commission finally resolved that it would consider at a later date, once it had gained more experience with the notice and access model, whether it is appropriate to extend the model to business combination

¹ Extract from the SEC's "E-Proxy"/"Notice and Access" FAQ, last modified on February 19, 2010.

² Eleven comment letters were received by the SEC arguing that the notice and model access should be made available for business combination transactions.

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transactions.³ We urge that now is the appropriate time to reconsider the extension of these rules to business combinations.

Unnecessary Burden and Expense of Compliance

Jones Day is a global law firm that specializes in, among other things, mergers and acquisitions, corporate and securities laws and corporate governance. In this capacity, we have worked on hundreds of business combination deals that have required the physical mailing of materials to stockholders. We therefore have first-hand experience about how costly and burdensome these business combination disclosures may be for issuers, and wish to stress the fact that such resources could instead be used for other activities that would benefit stockholders.

Since the Release in 2007, communications technology and Internet access have exploded. Investors today have, for their great majority, instant and wireless access to the Internet. In fact, 89% of all households in the United States in 2016 had a computer or smartphone,⁴ representing a tremendous increase since 2007 and having undoubtedly further risen since. Electronic applications even make the review of lengthy documents more comfortable and reader-friendly than paper documents.

The cost savings and environmental incentives, which were the main driving arguments mandating for this model, are all the more relevant for business combination transactions due to the length of certain of their disclosure documents and the number of exhibits to be included. Recent printing quotes for proxy materials to be mailed to an investor was estimated to be approximately \$3.00 per set and, with many companies being widely held and having up to a million beneficial owners, the out-of-pocket printing expense would be in the range of \$3.0 million dollars for a document that interested stockholders will have already viewed electronically (on Edgar or the issuer's website) and that a substantial portion of stockholders throw away without opening. In addition to the cost to the stockholders for such mailing, we have been told by shareholder communication experts that the amount of paper used often represents in excess of one hundred acres of trees to produce the paper. The cost savings and environmental benefit of such a rule extension would be significant, without any detriment to investors.

³ Language from Release, p. 50

⁴ United States Census Bureau, Computer and Internet Use in the United States : 2016, issued August 2018 (<https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>) : "Among all households in 2016, 89 percent had a computer, which includes smartphones, and 81 percent had a broadband Internet subscription."

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Moreover, review of the Commission's precedence demonstrates that steps towards such an extension of the notice and access model to business combinations have been initiated, as the use of the notice and access method has already been accepted, on a case-by-case basis, with respect to the proxy materials to be used to solicit proxies for the approval of certain mergers by an issuer's stockholders.⁵ The initial blanket exclusion thus no longer seems relevant.

Finally, as proxy statements for a business combination transaction are generally not materially longer or more complex than the combination of a proxy statement and annual report to stockholders, which are all already permitted to be made electronically available, they should therefore not be subject to a stricter regime.

In sum, the Commission, which deserves credit for revisiting rules that become technologically outdated, should reevaluate the merits of this distinction between proxies for business combinations and other proxy materials in light of these different items: cost savings, increased efficiency, faster access to information and positive environmental impact.

Specific Rule Change Requested

Please delete section (m) of Rule 14a-16:

(m) This section shall not apply to a proxy solicitation in connection with a business combination transaction, as defined in § 230.165 of this chapter, as well as transactions for cash consideration requiring disclosure under Item 14 of § 240.14a-101.

Conclusion

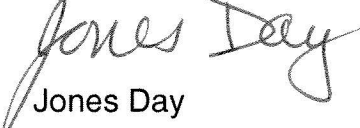
Antiquated rules that create unnecessary burden and expense for public companies and their stockholders should be updated to reflect changes in market practice and the availability of Internet access. We believe that revising the notice and access provision to eliminate the carve-out for business combinations is consistent with the current regulatory trend to reduce administrative burdens and eliminate unnecessary expense, and would acknowledge the wide availability of Internet access. Accordingly, we urge the Commission to undertake this reform promptly.

⁵ SEC No Action Letter, April 27, 2012, SAIC, Inc. (incoming letter dated April 23, 2012).

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Please feel free to contact Randi L. Strudler (212) 326-3626 or Peter E. Devlin (212) 326-3978 to discuss this matter in more detail.

Respectfully submitted,


Jones Day

cc: Robert A. Profusek
Global Chair of M&A at Jones Day