

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PART 240**

**[Release No. 34-57172; IC-28124; File No. S7-16-07]**

**RIN 3235-AJ92**

**ELECTRONIC SHAREHOLDER FORUMS**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting amendments to the proxy rules under the Securities Exchange Act of 1934 to facilitate electronic shareholder forums. The amendments clarify that participation in an electronic shareholder forum that could potentially constitute a solicitation subject to the proxy rules is exempt from most of the proxy rules if all of the conditions to the exemption are satisfied. In addition, the amendments state that a shareholder, company, or third party acting on behalf of a shareholder or company that establishes, maintains or operates an electronic shareholder forum will not be liable under the federal securities laws for any statement or information provided by another person participating in the forum. Therefore, the amendments remove legal ambiguity that might deter shareholders and companies from energetically pursuing this mode of communication.

**EFFECTIVE DATE:** February 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lillian Brown, Tamara Brightwell, or John Fieldsend at (202) 551-3700, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3010.

**SUPPLEMENTARY INFORMATION:** We are amending Rule 14a-2,<sup>1</sup> and adopting new Rule 14a-17,<sup>2</sup> under the Securities Exchange Act of 1934.<sup>3</sup>

## I. BACKGROUND

On July 27, 2007, the Commission published for comment a release proposing, among other things, amendments to the proxy rules relating to electronic shareholder forums.<sup>4</sup> We are adopting new Rule 14a-17<sup>5</sup> and adding an exemption to Rule 14a-2 substantially as proposed in that release.

The purposes of new Rule 14a-17 and the Rule 14a-2 exemption are to facilitate experimentation, innovation, and greater use of the Internet to further shareholder communications. By facilitating such communications on the Internet among shareholders, and between shareholders and their companies, we hope to tap the potential of technology to better vindicate shareholders' state law rights, including their right to elect directors, in ways that are potentially both more effective and less expensive for shareholders and companies.

In a series of proxy roundtables that we sponsored in May 2007, several participants observed that recent technological developments hold promise in this

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<sup>1</sup> 17 CFR 240.14a-2.

<sup>2</sup> 17 CFR 240.14a-17.

<sup>3</sup> 15 U.S.C. 78a et al.

<sup>4</sup> Release No. 34-56160 (July 27, 2007) [72 FR 43466] ("Proposing Release"). The instant release addresses only the electronic shareholder forum aspects of the Proposing Release. Comments received that addressed the comprehensive package of amendments to the proxy rules and related disclosure requirements are outside the scope of this adopting release.

<sup>5</sup> New Rule 14a-17 was proposed as Rule 14a-18.

regard.<sup>6</sup> Those participants noted that these technological developments could provide a more effective and efficient means of communication than any that are currently available to shareholders.<sup>7</sup>

For example, the participants suggested that an online forum that would be for the exclusive use of shareholders of the company could protect the shareholders' privacy through encrypted unique identifiers,<sup>8</sup> while still permitting participants to know what voting percentage of the company was represented in discussions.<sup>9</sup> Participants in such a forum could, in addition, discuss a variety of important subjects that today are considered, if at all, only periodically and indirectly through the proxy process.<sup>10</sup> With the use of electronic shareholder forums, shareholder participation and communication could be extended throughout the year, rather than only during the period leading up to companies' annual shareholder meetings. Shareholders might also use such a forum as a

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<sup>6</sup> See Rich Daly, Broadridge Financial Solutions, Inc.; Amy Goodman, Gibson, Dunn & Crutcher LLP; Stanley Keller, Edwards Angell Palmer & Dodge LLP; Cary Klafter, Intel Corporation; and Paul Neuhauser, The University of Iowa College of Law, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 152 to 171. See also, Russell Read, CalPERS; Amy Goodman, Gibson, Dunn & Crutcher LLP; Nell Minow, The Corporate Library; Bill Mostyn, Bank of America Corporation; and Gary Brouse, Interfaith Center on Corporate Responsibility, Transcript of Roundtable on Proxy Voting Mechanics, May 24, 2007, at 54 to 81.

<sup>7</sup> Id.

<sup>8</sup> See, e.g., Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 152; Rich Daly, Broadridge Financial Solutions, Inc., Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 157; and Nell Minow, The Corporate Library, Transcript of Roundtable on Proxy Voting Mechanics, May 24, 2007, at 67.

<sup>9</sup> See, e.g., Rich Daly, Broadridge Financial Solutions, Inc., Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 157.

<sup>10</sup> See, e.g., Rich Daly, Broadridge Financial Solutions, Inc., Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 156 and Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 160.

polling mechanism to elicit the sentiments of the company's managers or other shareholders on various potential actions.<sup>11</sup>

Technology now makes it feasible to establish such electronic shareholder forums to perform these functions. As one commenter indicated, technology is available to establish "secure, shareowner-to-shareowner communications, with access restricted to eligible shareowners, and using the Internet as a medium for efficient, ongoing interaction between shareowners and issuers."<sup>12</sup> These forums can be created so that operators and participants may exchange information electronically. Additionally, electronic shareholder forums can be designed to identify a participant's share ownership, as of a particular date, without disclosing that participant's name, address, or other identifying information.<sup>13</sup> Therefore, we think that participants' privacy can be protected while simultaneously providing for accountability for anyone making false or misleading statements.

If companies choose to participate in, or sponsor, electronic forums, they might find them of use in better gauging shareholder interest with respect to a variety of topics. A company-sponsored forum also could be used to provide a means for management to communicate with shareholders by posting press releases, notifying shareholders of record dates, and expressing the views of the company's management and board of

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<sup>11</sup> See, e.g., Stanley Keller, Edwards Angell Palmer & Dodge LLP and Rich Daly, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 170 to 171 and Nell Minow, The Corporate Library, Transcript of Roundtable on Proxy Voting Mechanics, May 24, 2007, at 54 to 56.

<sup>12</sup> Comment letter from Broadridge Financial Solutions, Inc.

<sup>13</sup> Id.

directors.<sup>14</sup>

Despite these potential benefits of electronic shareholder forums, shareholders and companies alike have been reluctant to establish, maintain, or operate them due, in part, to uncertainty over liability for statements and information provided by those participating in the forum. In addition, potential forum participants have expressed concern regarding whether views and statements expressed through the forum would be considered proxy solicitations. Therefore, we proposed a new exemption from the proxy rules (other than from the shareholder list provisions in Rule 14a-7 and the antifraud provisions in Rule 14a-9) for any solicitation in an electronic shareholder forum that satisfies the conditions of the exemption. We also proposed new Rule 14a-17 to provide liability protection for a shareholder, company, or third party acting on behalf of a shareholder or company that establishes, maintains or operates an electronic shareholder forum regarding statements or information provided by another party participating in the forum.

As we discuss further in Section III, we are adopting new Rule 14a-17 and the amendments to Rule 14a-2 substantially as proposed. We are taking these steps to remove both real and perceived impediments to continued private sector experimentation with, and use of the Internet for, communication among shareholders, and between shareholders and the companies in which they invest. We intend for the amendments to facilitate communication and thereby encourage the creation of, and participation in, electronic shareholder forums.

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<sup>14</sup> Of course, anyone posting information on an electronic shareholder forum should consider the requirements of Regulation FD. See 17 CFR 243.100 to 243.103.

## **II. COMMENTS ON THE PROPOSED AMENDMENTS TO FACILITATE ELECTRONIC SHAREHOLDER FORUMS**

The majority of the public comment on the proposed amendments to facilitate electronic shareholder forums was favorable.<sup>15</sup> A substantial percentage of commenters remarking on the amendments, however, opposed substituting electronic shareholder forums for the current means of presenting non-binding shareholder proposals in the company's proxy statement pursuant to Rule 14a-8.<sup>16</sup> Although we solicited comment on this question, we did not propose any revisions to Rule 14a-8 that would cause the electronic shareholder forum to be a substitute for the Rule 14a-8 process. In the rule amendments that we are adopting today, we are making the electronic shareholder forum option an additional, rather than substitute, means of communication that could enhance and expand opportunities for participation and interaction.

In our proposing release, we requested comment on five basic issues related to electronic shareholder forums. The first issue was whether the proposed amendments would have their intended effect of providing sufficient flexibility under the federal securities laws to establish forums that permit interaction among shareholders and between shareholders and the company. In this regard, we solicited comment on whether shareholders and companies desire such flexibility, and if they do, whether the amended rules would provide it. We also solicited comment on whether any additional measures

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<sup>15</sup> See, e.g., comment letters from The Allstate Corporation ("Allstate"); Business Roundtable ("BRT"); Capital Research and Management Company ("Capital Research"); GreenMachines.net ("GreenMachines"); and Investment Company Institute ("ICI").

<sup>16</sup> 17 CFR 240.14a-8.

are necessary to ensure that the federal securities laws do not hinder development of these forums. Finally, we asked whether the rules should provide more direction and guidance relating to the structure and purpose of the forums than we proposed.

The second issue on which we solicited comment concerned the potential liability under the federal securities laws associated with electronic shareholder forums. A primary purpose of the proposed amendments was to clarify that establishing, maintaining, or operating an electronic shareholder forum does not make one liable for statements or information provided by another person. We also asked commenters to identify any additional liability issues under the federal securities laws that we may not have addressed through the proposed amendments.

The third issue concerned the period of time during which electronic shareholder forums should be allowed to operate without being subject to most of the federal proxy rules. Under the proposed amendments, any solicitation in an electronic shareholder forum by or on behalf of a person that does not seek, directly or indirectly, the power to act as a proxy for a shareholder would be exempt from most of the proxy rules.

We proposed that such a person could avail himself or herself of the exemption provided that the solicitation was made more than 60 days before the date announced by the company for its next annual or special meeting, or not more than two days following the announcement of such a meeting if the announcement occurred fewer than 60 days before the meeting date. We solicited comment on whether an electronic shareholder forum could function effectively with this timing limitation. We also asked whether better alternatives exist to encourage free and open communication. Additionally, we solicited comment on whether we should require electronic shareholder forums to be

closed down within 60 days of a scheduled shareholder meeting, whether shareholders whose communications remain posted inside the 60-day period should be required to file them with us, and how to best monitor these forums.

Fourth, we solicited comment regarding the use of electronic shareholder forums as a substitute for advancing referenda that otherwise would be presented in the form of non-binding shareholder proposals for inclusion in a company's proxy materials.

Finally, we solicited comment on the ways that an electronic shareholder forum might be used in connection with bylaw proposals regarding procedures for nominating candidates to the board of directors. In particular, we solicited comment on whether shareholders should be able to use an electronic shareholder forum to solicit other shareholders to join with them in submitting a bylaw proposal.

The vast majority of commenters supported the new exemption for electronic shareholder forums that we proposed to add to Rule 14a-2 and proposed new Rule 14a-17.<sup>17</sup> The commenters generally favored the continued development of electronic shareholder forums as a means of facilitating communication among shareholders and between shareholders and companies.<sup>18</sup>

Despite the generally favorable reaction, some commenters predicted that electronic shareholder forums might develop into the same types of shareholder chat

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<sup>17</sup> See, e.g., comment letters from Allstate; BRT; Capital Research; GreenMachines; and ICI.

<sup>18</sup> See, e.g., comment letters from Calvert Group, Ltd. ("Calvert"); Senator Carl Levin ("Senator Levin"); and Stephen R. Van Withrop ("Van Winthrop").

rooms that exist today.<sup>19</sup> Other commenters suggested that the issues related to electronic shareholder forums require more time to be fully analyzed and should be addressed only upon completion of a comprehensive study reviewing the shareholder communications process.<sup>20</sup> Finally, some commenters asserted that we did not adequately address whether the proposed 60-day, non-solicitation period prior to a proxy vote would provide sufficient protection against a coordinated proxy campaign waged on an electronic shareholder forum.<sup>21</sup>

Most of the commenters expressing concerns regarding non-binding shareholder proposals stated that they would oppose making the electronic shareholder forum a substitute for the current process under Rule 14a-8. Several of these commenters made it clear that they support electronic shareholder forums, provided that they are only a supplement to the current Rule 14a-8 process.<sup>22</sup>

Additionally, some commenters mentioned that keeping the identity of participants who post messages on these electronic forums private would threaten meaningful communications among shareholders and with the company.<sup>23</sup> These commenters asserted that participants' identities should be disclosed and that the

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<sup>19</sup> See, e.g., comment letters from Bricklayers and Trowel Trades International Pension Fund (“Bricklayers”); Green Century Capital Management (“Green Century”); Social Investment Forum (“SIF”), and Walden Asset Management (“Walden”).

<sup>20</sup> See comment letters from American Bar Association (“ABA”) and Society of Corporate Secretaries and Governance Professionals (“SCSGP”).

<sup>21</sup> See comment letters from ABA and SunTrust Banks, Inc. (“SunTrust”).

<sup>22</sup> See, e.g., comment letters from Christus Health (“Christus”); Domini Social Investments (“Domini”); and Trillium Asset Management (“Trillium”).

<sup>23</sup> See comment letters from ABA and Christian Brothers Investment Services, Inc. (“Christian Brothers”).

participants' ownership interests in the company should be made known as well.

### **III. FINAL RULES TO FACILITATE ELECTRONIC SHAREHOLDER FORUMS**

As stated above, the amendments that we are adopting in this release provide an additional means for shareholders to communicate, and do not in any manner restrict a shareholder's ability under Rule 14a-8 to submit a non-binding proposal to a company for inclusion in the company's proxy materials. Furthermore, the amendments neither mandate nor preclude private communications in electronic shareholder forums; instead, they allow for flexibility in different approaches and to allow innovation and experimentation.<sup>24</sup>

The amendments are designed to facilitate greater online interaction among shareholders by removing two major obstacles to the use of electronic shareholder forums.<sup>25</sup> The first major obstacle to the use of electronic shareholder forums is the concern that a statement made by a participant in an electronic shareholder forum will be construed as a solicitation under the proxy rules. Section 14(a) of the Exchange Act<sup>26</sup> requires that the solicitation of proxy voting authority be conducted in a fair, honest, and informed manner.<sup>27</sup> Any solicitation of proxies in connection with securities registered

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<sup>24</sup> Because the antifraud provisions of Rule 14a-9 would apply to any postings, it could conceivably be necessary for a participant to identify itself in an otherwise anonymous forum if failure to do so in the circumstances would result in the omission of a "material fact necessary in order to make the statements therein not false or misleading." 17 CFR 240.14a-9.

<sup>25</sup> 17 CFR 240.14a-2(b)(6) and 17 CFR 240.14a-17.

<sup>26</sup> 15 U.S.C. 78n(a).

<sup>27</sup> Release No. 34-31326 (October 16, 1992) [57 FR 48276 and 48277].

pursuant to Section 12 of the Exchange Act<sup>28</sup> is subject to the filing and disclosure requirements of the Commission’s proxy rules.<sup>29</sup> In this regard, the Commission has broad authority to control the conditions under which proxies may be solicited so that it promotes “fair corporate suffrage.”<sup>30</sup> A necessary element of this authority is to prevent solicitors from obtaining authorization for corporate action by means of “deceptive or inadequate disclosure in proxy solicitations.”<sup>31</sup>

As defined by the Commission, the term “solicitation” encompasses not only a request that a shareholder execute a proxy, but also the “furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.”<sup>32</sup> As such, the proxy rules apply to any person seeking to influence the voting of proxies, regardless of whether the person is seeking authorization to act as a proxy. Both the courts and the Commission have construed this necessarily fact-intensive test broadly to bring within the ambit of the proxy rules any communication that, under the totality of relevant circumstances, is considered “part of a continuous plan ending in a solicitation and which

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<sup>28</sup> 15 U.S.C. 78l.

<sup>29</sup> See 15 U.S.C. 78n(a) and 17 CFR 240.14a-1 and 240.14a-2(b)(1).

<sup>30</sup> 17 H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13 (1934) at 14. The House Report indicated that the Commission was provided with this broad power “with a view to preventing the recurrence of abuses which...[had] frustrated the free exercise of the voting rights of stockholders.” Id.

<sup>31</sup> J.I. Case v. Borak, 377 U.S. 426, 431 (1964).

<sup>32</sup> 17 CFR 240.14a-1(l). Pursuant to Rule 14a-1(l)(2), the term “solicitation” does not include the furnishing of a form of proxy to a shareholder upon the latter’s unsolicited request, the issuer’s performance of acts mandated by 17 CFR 240.14a-7, the shareholder list requirement, or ministerial acts performed by any person on behalf of the soliciting party.

prepare(s) the way for its success.”<sup>33</sup>

Therefore, we are adding a new exemption to Rule 14a-2 to state explicitly that Rules 14a-3 through 14a-6 (other than Rule 14a-6(g)), Rule 14a-8, and Rules 14a-10 through 14a-15 do not apply to any solicitation in an electronic shareholder forum if all of the conditions to the exemption are satisfied.<sup>34</sup> Rule 14a-2(b)(6) exempts from most of the proxy rules any solicitation by or on behalf of any person who does not seek directly or indirectly, either on its own or another’s behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent, or authorization in an electronic shareholder forum that is established, maintained or operated by a company, shareholder, or a third party acting on a company’s or shareholder’s behalf.<sup>35</sup>

A solicitation on an electronic shareholder forum will be exempt so long as it occurs more than 60 days prior to the date announced by the company for its annual or special meeting of shareholders. If the company announces the meeting less than 60 days before the meeting date, the solicitation may not occur more than two days following the company’s announcement.<sup>36</sup> We are adopting the limitations to the exemption because, although an electronic shareholder forum should provide a medium for, among other things, open discussion, debate, and the conduct of referenda, the actual solicitation of

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<sup>33</sup> Release No. 34-29315 (June 17, 1991) [56 FR 28987 and 28989]. See, e.g., Long Island Lighting Company v. Barash, et al., 779 F. 2d 793 (2d Cir. 1985).

<sup>34</sup> Id.

<sup>35</sup> See Exchange Act Rule 14a-2(b)(6).

<sup>36</sup> The proposal would not affect the application of any other exemptions under Regulation 14A. For example, a person could rely on the other applicable exemptions in Exchange Act Rule 14a-2 (17 CFR 240.14a-2).

proxy authority for an upcoming meeting should be conducted in full compliance with the proxy rules. Any proxies obtained prior to the application of our proxy rules will not benefit from the full and fair disclosure required under the regulations.

A person who participates in an electronic shareholder forum and makes solicitations in reliance on the Rule 14a-2(b)(6) exemption will be eligible to solicit proxies after the date that the exemption is no longer available, or is no longer being relied upon, provided that any such solicitation complies with Regulation 14A. In fact, it is for this reason that Rule 14a-2(b)(6) is necessary. Existing Rule 14a-2(b)(1)<sup>37</sup> provides that most of the proxy rules do not apply to “[a]ny solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another’s behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization.”

Therefore, statements on an electronic shareholder forum could be exempt under Rule 14a-2(b)(1), even if these amendments were not adopted. Once an exempt solicitation is made under Rule 14a-2(b)(1), however, the individual making the solicitation cannot later request proxy authority. Consequently, Rule 14a-2(b)(6) states that a person who participates in an electronic shareholder forum and makes a solicitation in reliance on this rule can later solicit proxies without threatening the exemption’s validity.

We believe that exempting participation in an electronic shareholder forum only up until 60 days before an annual or special meeting will limit the potential for abuse, and

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<sup>37</sup> 17 CFR 240.14a-2(b)(1).

therefore we are adopting the 60-day limitation.<sup>38</sup> Communications within an electronic shareholder forum that occur less than 60 days prior to the annual or special meeting, or more than two days after the announcement of the meeting if the announcement is made less than 60 days prior to the meeting date, will continue to be treated as they were under the proxy rules prior to these amendments. We recognize the concern that, as one commenter noted, 60 days may not be “sufficient practical protection against the ability of a coordinated campaign to so color shareholder perceptions as to make the vote a likely, if not foregone, conclusion.”<sup>39</sup>

We believe that the 60 day cut-off period will provide sufficient time for shareholders to consider the information disclosed to them about a planned shareholder meeting. We also believe that removing obstacles to shareholder participation in electronic forums outweighs the potential for such communications to impact a shareholder’s vote. Of course, persons relying on Rule 14a-2(b)(6) who later solicit proxy authority will need to comply with other Commission rules as applicable.

Additionally, although commenters did not request specifically that we provide guidance on the potential proxy rule implications of stored communications available on a forum after the 60-day period, one commenter referenced this subject.<sup>40</sup> In this regard, shareholders who post communications on forums in reliance on Rule 14a-2(b)(6) and later solicit the power to act as a proxy for a shareholder will need to determine whether

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<sup>38</sup> Sixty days corresponds with the maximum amount of time prior to a scheduled meeting that the company may fix the record date for determining the stockholders entitled to notice of, or to vote at, a meeting under the Delaware Code. See Del. Code title 8, §213 (2007).

<sup>39</sup> See comment letter from ABA.

<sup>40</sup> See comment letter from SunTrust.

the earlier postings must be filed as soliciting materials. For instance, it is possible that earlier postings remaining available to shareholders could be “reasonably calculated to result in the procurement, withholding or revocation of a proxy.”<sup>41</sup> Therefore, any communications made, or that remain available, on the forum after the 60-day period must comply with the proxy rules if they constitute a solicitation, unless they fall within an existing exemption. One way that a forum might deal with this question is to give participants the opportunity to delete their postings as of the 60-day cut-off, or have the forum “go dark” during this period.<sup>42</sup>

The second major obstacle to the use of electronic shareholder forums is the concern that one who establishes, maintains, or operates the forum will be liable under the federal securities laws for statements made by forum participants. With respect to the establishment of such forums, which can be conducted and maintained in any number of ways, new Rule 14a-17 clarifies that a shareholder or company (or third party acting on behalf of a shareholder or company) that establishes, maintains, or operates an electronic shareholder forum is not liable for statements made by another person participating in the forum.<sup>43</sup>

The persons providing information to or making statements on an electronic shareholder forum, however, will remain liable for the content of those communications under traditional liability theories in the federal securities laws, such as those in Section

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<sup>41</sup> 17 CFR 240.14a-1(l)(1)(iii).

<sup>42</sup> Of course, if a person begins soliciting proxies earlier than the 60-day cut off period, that person would no longer have the benefits of the exemption and would therefore need to comply with the proxy rules, including perhaps by filing any available postings as soliciting materials or removing prior postings from the forum.

<sup>43</sup> 17 CFR 240.14a-17(b).

17(a) of the Securities Act and Section 10(b), Rule 10b-5, Rule 14a-9, and Section 20(e) of the Exchange Act. The prohibitions in the antifraud provisions against primary or secondary participation in fraud, deception, or manipulation will continue to apply to those supplying information to the site, and claims will not face any additional obstacles because of the new rule. Also, any other applicable federal or state law will continue to apply to persons providing information or statements to an electronic shareholder forum.

As adopted, new Rule 14a-17 provides liability protection for all shareholders, companies, and third parties acting on behalf of a shareholder or company that establish, maintain, or operate an electronic shareholder forum under the federal securities laws, provided that the forum is conducted in compliance with the federal securities laws, applicable state law and the company's charter and bylaws. The proposed rule would have applied only to companies and shareholders, but we believe it is appropriate to expand liability protections to other types of forum sponsors or operators, such as Internet service providers and shareholder or corporate associations, acting at the request, and on the behalf, of a shareholder or company.

As noted above, liability under the federal securities laws for statements made on an electronic shareholder forum is one area of concern for shareholders, companies, or third parties acting on behalf of a shareholder or company when making the decision about whether to establish such a forum. The main purpose of Rule 14a-17 is to protect the person establishing, maintaining, or operating an electronic shareholder forum from liability under the federal securities laws in much the same way that the federal

telecommunications laws protect an interactive computer service.<sup>44</sup>

Commenters suggested certain other changes to the proposed rules. For instance, one commenter questioned whether statements made in reliance on Rule 14a-2(b)(6) are in fact solicitations as defined in Rule 14a-1(l),<sup>45</sup> and why the antifraud provisions of Rule 14a-9 and the filing requirements of Rule 14a-6 did not apply to such statements.<sup>46</sup> We believe that statements posted on an electronic shareholder forum may constitute a solicitation as defined in Rule 14a-1(l) and that is why we are adopting Rule 14a-2(b)(6) as an exemption from most of the proxy rules for such postings and specifically designating which proxy rules would apply to the postings.

We also considered whether certain persons who rely on the new Rule 14a-2(b)(6) exemption should be required to file a notification with the Commission. We concluded that filing such a notification would be unnecessary because the postings made in reliance on new Rule 14a-2(b)(6) will be limited to postings made in a shareholder forum by persons who are not seeking, directly or indirectly, the power to act as a proxy for a shareholder and to those made more than 60 days before any meeting of shareholders.

Further, one commenter highlighted the need for persons who may rely on the exemption in Rule 14a-2(b)(6) to give consideration to the impact of the postings under other Commission rules and regulations. In particular, the commenter cited the potential

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<sup>44</sup> See Section 230(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. 230(c)(1)) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”). The protection against liability in Section 230(c)(1) would presumably also apply to providers and users of electronic shareholder forums.

<sup>45</sup> 17 CFR 240.14a-1(l).

<sup>46</sup> See comment letter from SunTrust.

implications of electronic shareholder forum postings on Regulation 13D beneficial ownership reporting.<sup>47</sup> Again, we agree that any person relying on Rule 14a-2(b)(6) would need to assess whether compliance with other Commission rules and regulations is required. For instance, communications among shareholders in an electronic shareholder forum for the purpose of acquiring, holding, voting, or disposing of the equity securities of a company might result in the formation of a group for purposes of Regulation 13D.<sup>48</sup> Also, soliciting activities may impact the eligibility to file a Schedule 13G.<sup>49</sup>

In conclusion, we intend to remove legal ambiguity that might inhibit shareholders, companies, or third parties acting on behalf of a shareholder or company from the energetic pursuit of this mode of communication. We also intend that the amendments will encourage shareholders, companies, or third parties acting on behalf of a shareholder or company to take advantage of electronic shareholder forums to facilitate better communication among shareholders and between shareholders and companies.

#### **IV. PAPERWORK REDUCTION ACT**

The proxy rules constitute a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995, the PRA.<sup>50</sup> The amendments described in this release relate to a previously approved collection of information, “Proxy Statements – Regulation 14A (Commission Rules 14a-1 through 14a-16 and Schedule

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<sup>47</sup> See comment letter from ABA.

<sup>48</sup> 17 CFR 240.13d-5.

<sup>49</sup> See Release No. 34-39538 (January 12, 1998) [63 FR 2854], Section G (Shareholder Communications and Beneficial Ownership Reporting).

<sup>50</sup> 44 U.S.C. 3501 et seq.

14A (OMB Control No. 3235-0059).” Regulation 14A was adopted pursuant to the Exchange Act and sets forth the disclosure requirements for proxy statements filed by companies to help shareholders make informed voting decisions. We do not believe that the amendments to Rule 14a-2, or the creation of new Rule 14a-17, require any revision to our current burden estimates for Regulations 14A or impose any new recordkeeping or information collection requirements under the PRA that require approval of the Office of Management and Budget, the OMB.

## **V. COST-BENEFIT ANALYSIS**

We are adopting amendments to the proxy rules under the Exchange Act to facilitate electronic shareholder forums by removing legal ambiguity under the federal securities laws that might deter shareholders, companies, or third parties acting on a shareholder’s or company’s behalf from establishing or contributing to such forums. These amendments clarify that participation in an electronic shareholder forum which potentially could constitute a proxy solicitation subject to the proxy rules, is exempt from most of the proxy rules if the conditions to the exemption are satisfied. In addition, these amendments state that a shareholder, company, or third party acting on a shareholder’s or company’s behalf that establishes, maintains, or operates an electronic shareholder forum generally will not be liable under the federal securities laws for any statement or information provided by another person participating in the forum.

### **A. Benefits**

The most important benefit of the amendments that we are adopting is that they will eliminate a regulatory obstacle to electronic shareholder forums which hold the potential to significantly improve communications among shareholders and between

shareholders and the companies they own. As a result of the amendments, shareholders and companies may be more willing to create or sponsor these forums, because the regulatory and liability regime will be more clearly defined.

Among the potential benefits to shareholders and companies are cheaper, more timely, and more relevant exchanges of information among shareholders and between shareholders and companies. Electronic shareholder forums could generate attention for sound proposals that could increase the value of share ownership, and they could filter out proposals not supported by other shareholders. They could also help disparate shareholders form stronger coalitions and coordinate their voices.<sup>51</sup> These forums can also better educate or otherwise inform shareholders with respect to the issues that will likely come up through proxy solicitations during the 60 days prior to an annual meeting.

In this regard, the majority of the amendments' benefits flow from the potential reduction in costs of collective action among shareholders and the potential reduction of costs in communications between shareholders and companies if there is more extensive use of electronic forums. For example, a shareholder who does not agree with a corporate policy and therefore is considering taking steps to have the company change that policy may not be able to easily and inexpensively survey other shareholders and determine their sentiments regarding the policy. Therefore, that shareholder presently has to decide whether to take the costly steps of opposing the company's action by

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<sup>51</sup> Of course, communications among shareholders in an electronic shareholder forum for the purpose of acquiring, holding, voting, or disposing of the equity securities of a company might result in the formation of a group for purposes of Regulation 13D. 17 CFR 240.13d-5. Also, soliciting activities may impact the eligibility to file a Schedule 13G. See Release No. 34-39538 (January 12, 1998) [63 FR 2854], Section G (Shareholder Communications and Beneficial Ownership Reporting).

submitting a non-binding proposal or running a proxy contest without having the benefit of knowing whether the initiative is favored or will be supported by other shareholders.

Electronic shareholder forums may reduce communication and coordination costs among shareholders and also reduce companies' costs in replying if they choose to do so. A shareholder seeking to submit a non-binding proposal or conduct a proxy contest may be encouraged or discouraged from doing so in accordance with the better information that he or she will have acquired, at little or no cost, about the preference of other shareholders. And if a proposal is enthusiastically supported by a significant number of shares, the company might take notice and voluntarily adopt it; again, saving the shareholder considerable expense and benefiting the company and its shareholders overall.

Even if the company does not voluntarily adopt an initiative that reflects strong shareholder sentiment, knowledge of this fact by other shareholders will make it more likely that the initiative will be submitted and adopted. Shareholders may be encouraged to run successful proxy contests to pursue such changes, or management may be more responsive to the concerns in other ways. Thus, shareholders may benefit from a closer alignment between management and the interests of shareholders.

Another way that shareholders and companies may benefit from the amendments is that they could have more information to use in evaluating initiatives submitted for their consideration by other shareholders or by management. This information could be available at little or no incremental cost and could be readily accessible and searchable because it is in electronic form. Therefore, the amendments may reduce the cost of monitoring issues among shareholders.

Finally, more extensive use of electronic shareholder forums may be a step towards improving the informational efficiency of the market generally.

## B. Costs

There are several potential costs to shareholders of implementing the amendments to the proxy rules, although all such costs would be voluntarily undertaken. One immediate cost of an electronic shareholder forum is that of maintaining and operating it. Although empirical data are not available for the exact costs of operating electronic shareholder forums, based on comparable costs of maintaining interactive websites, the costs of starting and maintaining a basic shareholder forum are not expected to be high. As more complicated features are included in a forum by its operators, such as eligibility verification procedures, anonymous accountability programs, and share ownership displays, costs could be expected to increase accordingly. Again, however, the decision to establish, operate, or maintain an electronic shareholder forum, and to add more expensive features, is voluntary.

Additionally, to the extent that the amendments to the proxy rules we are adopting result in an increase in the number of electronic forums, there could be increased costs related to the additional time that a shareholder or company chooses to spend monitoring, processing, and considering information that is posted on the forums. These costs will generally correspond to the number of shareholders using the forums, the frequency with which those shareholders post information on the forums, and the level of attention that shareholders or companies choose to pay to the ideas and opinions of the shareholders.

Should a company choose to sponsor or use an electronic shareholder forum, the company, and derivatively its shareholders, would bear the associated costs. If the

company or its shareholders used the forum to conduct shareholder polls or surveys, the costs of the forums would be commensurately higher due to the time and effort necessary to accurately determine the results.

Moreover, because electronic shareholder forums may generally reduce the cost of communication among shareholders and between shareholders and companies, they may increase the frequency of that communication and thus, incidentally, the subset of that communication that constitutes misstatements, whether made intentionally or unintentionally. This could increase the costs of the forums to companies or shareholders. Although shareholders are held liable under the federal securities laws for fraudulent statements made on the forums, at least one commenter still expressed a concern that fraudulent information may lead to problems for a company, such as changes in stock prices,<sup>52</sup> which could increase costs to shareholders.

It should be noted, however, that the opportunity for online fraudulent misstatements is not new, as a number of shareholder forums exist online already, and there is nothing in the nature of electronic shareholder forums that should attract misstatements in greater numbers than other more public areas of the Internet. Regardless, it is possible that misstatements on an electronic shareholder forum could be taken more seriously in cases where the forum is restricted, for example, to only shareholders and the company. Even so, given the inevitability of occasional miscommunication, an electronic forum in which both the shareholders and the company participate may provide a means to quickly dispel any misleading information.

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<sup>52</sup> See, e.g., comment letter from Domini.

Another potential cost is that shareholders may have less complete information with which to evaluate proposals than they would have otherwise because the amendment facilitates solicitation, outside the 60-day period prior to an annual or special meeting, without mandating extensive disclosure about the identity and the ownership of the participants that would occur otherwise. Because disclosures of this type may in some instances provide other shareholders with valuable information regarding possible motivations behind proposals that they would not otherwise receive, shareholders currently benefit from the proxy rules mandating such disclosure. Under the current rulemaking, some solicitations that would ordinarily be accompanied by these additional disclosures would proceed without them. The magnitude of this cost of lost information, however, depends on the extent to which shareholders have easy access to substitute sources of information and to the extent the information is material to the actions of shareholders and companies in the proxy voting process.

Finally, a shareholder that cannot, or chooses not to, use the Internet may be disadvantaged by not being able to fully participate in this form of dialogue among shareholders and between shareholders and the company. As a result, these shareholders may incur costs associated with adjusting to the use of electronic forums or in searching for the information being conveyed on the electronic forums in another medium. Alternatively, a shareholder who has never used the Internet but feels compelled to do so because of an electronic shareholder forum would incur the costs of obtaining Internet access. These costs, however, are similar to those that shareholders already must incur in to participate in existing electronic forums. Nonetheless, it is possible that if electronic shareholder forums are restricted to shareholders and companies, they will be considered

more relevant and meaningful than existing forums that are available to any person. The costs to shareholders not willing or able to use electronic shareholder forums could be offset to some degree by the fact that other shareholders with whom they share a common financial interest may take advantage of the forums to propose initiatives and make their sentiments known to the company.<sup>53</sup>

## **VI. CONSIDERATION OF BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION**

Section 23(a)(2) of the Exchange Act<sup>54</sup> requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act<sup>55</sup> and Section 2(c) of the Investment Company Act of 1940<sup>56</sup> requires us, whenever we engage in rulemaking and are required to consider or determine if an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation.

By removing legal ambiguity, we anticipate the rules will promote efficiency in shareholder communications. Electronic shareholder forums may reduce communication costs and coordination costs among shareholders and also reduce companies' costs in replying if they choose to do so. Finally, more extensive use of electronic shareholder

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<sup>53</sup> Also, a forum operator, or a forum participant, could choose to mail notice of important developments on the electronic shareholder forum to shareholders who are not willing or able to use the technology.

<sup>54</sup> 15 U.S.C. 78w(a)(2).

<sup>55</sup> 15 U.S.C. 78c(f).

<sup>56</sup> 15 U.S.C. 80a-2(c).

forums may be a step towards improving the informational efficiency of the market generally.

To the extent shareholders express interest in starting or participating in forums, competition among service providers to host or operate the forums may increase. We do not anticipate any effect on capital formation.

## **VII. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS**

This Final Regulatory Flexibility Act Analysis, the FRFA, has been prepared in accordance with the Regulatory Flexibility Act.<sup>57</sup> This FRFA relates to new Rule 14a-17 and the new Rule 14a-2 exemption, which will facilitate greater online interaction among shareholders and their companies by removing some obstacles to the use of electronic shareholder forums. These amendments to the proxy rules clarify that a shareholder, company, or third party acting on a shareholder's or company's behalf that establishes, maintains, or operates an electronic shareholder forum is not liable for statements made by another person or entity participating in the forum. Also, the amended rules exempt any solicitation in an electronic shareholder forum from the proxy rules, other than from the shareholder list provisions in Rule 14a-7 and the antifraud provisions in Rule 14a-9, if all of the conditions to the exemption are satisfied. An Initial Regulatory Flexibility Act Analysis was prepared in accordance with the Regulatory Flexibility Act and included in the Proposing Release.

### **A. Need for the Amendments**

These amendments to the proxy rules are necessary to remove legal ambiguity that might deter shareholders, companies, and others from establishing or participating in

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<sup>57</sup> 5 U.S.C. 601.

electronic shareholder forums. New Rule 14a-17 and the new Rule 14a-2(b)(6) exemption will clarify the responsibilities of those who establish, maintain, operate, and contribute to electronic shareholder forums, with the purpose of stimulating experimentation, innovation, and greater use of the Internet to further shareholder communications. By facilitating such communications on the Internet among shareholders, and between shareholders and their companies, we hope to tap the potential of technology to better vindicate shareholders' state law rights, including their rights to elect directors, in ways that are potentially both more effective and less expensive.

Despite the potential benefits of electronic shareholder forums, shareholders and companies alike have been reluctant to establish, maintain, or operate them due, in part, to uncertainty over liability for statements and information provided by those participating in the forum. In addition, shareholders and companies have expressed concern regarding whether views and statements expressed through a forum would be considered proxy solicitations.

Therefore, we are adopting Rule 14a-17 to provide liability protection for a shareholder, company, or third party acting on behalf of a shareholder or company that establishes or maintains an electronic shareholder forum regarding statements or information provided by others participating in the forum. Also, we are adopting the new Rule 14a-2(b)(6) exemption from the proxy rules to explicitly state that Rules 14a-3 through 14a-6 (other than Rule 14a-6(g)), Rule 14a-8, and Rules 14a-10 through 14a-15 do not apply to any solicitation in an electronic shareholder forum. By taking these steps, we hope to remove both real and perceived impediments to continued private sector experimentation with, and use of, the Internet for communication among shareholders,

and between shareholders and the companies in which they invest. We intend for the amendments to encourage the creation of, and participation in, electronic shareholder forums.

### **B. Significant Issues Raised by Public Comments**

In the Proposing Release, we published for comment a number of amendments to the proxy rules under the Exchange Act concerning shareholder proposals generally. The description of the proposed amendments regarding electronic shareholder forums constituted only one section of the release.<sup>58</sup> In this release, we are adopting only the proposed amendments to the proxy rules that relate to electronic shareholder forums and not the proposed amendments dealing with other aspects of shareholder proposals.

The majority of the public comment regarding electronic shareholder forums was favorable.<sup>59</sup> Generally, the commenters favored the exemption and new rule because they support the continued development of electronic shareholder forums as a means of facilitating communication among shareholders and between shareholders and companies.<sup>60</sup> A substantial percentage of the commenters opposed substituting electronic shareholder forums for the current means of presenting non-binding shareholder proposals in the company's proxy statement pursuant to Rule 14a-8. Although we solicited comment on the idea of using electronic shareholder forums as the sole means to present non-binding shareholder proposals to shareholders, several of the commenters made it clear that they supported electronic shareholder forums provided that the forums

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<sup>58</sup> Proposing Release, Section II.B (Electronic Shareholder Forums).

<sup>59</sup> See, e.g., comment letters from Allstate, BRT, Capital Research, GreenMachines, and ICI.

<sup>60</sup> See, e.g., comment letters from Calvert, Senator Levin, and Van Winthrop.

were a supplement to, and not a replacement for, the current Rule 14a-8 process.<sup>61</sup> Under the final rules, electronic shareholder forums will be an additional, rather than substitute, means of communication.

Additionally, some commenters believed that keeping the identity of shareholders who post messages on these electronic forums anonymous would threaten meaningful communications among shareholders and the company.<sup>62</sup> These commenters asserted that shareholders' identities should be disclosed and that the shareholders' ownership interests in the company should be made known as well. The rule amendments that we are adopting today neither mandate nor preclude anonymous communications because we want to allow forum sponsors to have flexibility in creating electronic shareholder forums and to encourage innovation and experimentation.

Despite the generally favorable reaction, some commenters were concerned about possible negative consequences of the amendments. First, some commenters worried that the electronic shareholder forums could develop into shareholder chat rooms, which may not provide for meaningful communication.<sup>63</sup> Other commenters asserted that we did not adequately address whether shareholders and others could wage a successful, coordinated proxy campaign beyond the 60-day period during which the regular proxy rules would not apply.<sup>64</sup> Finally, some commenters suggested that we analyze the issue further and address electronic shareholder forums as part of a more comprehensive study reviewing

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<sup>61</sup> See, e.g., comment letters from Christus, Domini, and Trillium.

<sup>62</sup> See comment letters from ABA and Christian Brothers.

<sup>63</sup> See, e.g., comment letters from Bricklayers, Green Century, SIF, and Walden.

<sup>64</sup> See comment letters ABA and SunTrust.

the shareholder communications process.<sup>65</sup>

In the Proposing Release, we requested comment on many aspects of the proposed amendments to the proxy rules concerning shareholder proposals generally, including the number of small entities that would be affected by the proposed amendments, and the quantitative and qualitative nature of the impact. Commenters, including the Office of Advocacy of the Small Business Administration, addressed several aspects of the proposed rule amendments that potentially could have affected small entities. However, none of the commenters specifically discussed the effect of the proposed amendments regarding electronic shareholder forums on small businesses or entities. In particular, because the electronic shareholder forums authorized by the amendments that we are adopting are entirely voluntary, we believe that they will beneficially affect small businesses and entities in the same manner that they will beneficially affect larger businesses and entities. This is because presumably, only those businesses and entities that find them beneficial will choose to use them.

### **C. Small Entities Subject to the Final Amendments**

The amendments that we are adopting in this release will affect only shareholders and companies that voluntarily establish, maintain, or operate electronic shareholder forums or that post information on, or provide information to, such forums. Some of the companies or shareholders may be small entities. Exchange Act Rule 0-10(a) defines an issuer, other than an investment company, to be a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent

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See comment letters from ABA and SCSGP.

fiscal year. We estimate that there are approximately 1,110 issuers, other than investment companies, that may be considered small entities.

We are adopting the amendments to the proxy rules to facilitate electronic shareholder forums by clarifying that participation in a forum, which could potentially constitute a proxy solicitation subject to the proxy rules, is exempt from most of the proxy rules if the shareholder or company satisfies all of the conditions to the exemption. Also, we are facilitating electronic shareholder forums by clarifying that any shareholder, company, or third party acting on behalf of a shareholder or company that establishes, maintains, or operates an electronic shareholder forum will not solely because of establishing, maintaining, or operating the forum be liable under the federal securities laws for any statement or information provided by another person participating in the forum. The amendments remove legal ambiguity that might deter shareholders and companies from relying on this mode of communication.

The amendments that we are adopting only apply to shareholders, companies, or third parties acting on their behalf if they choose to establish, maintain, operate, or participate in electronic shareholder forums. We are not requiring a small entity to have any involvement with electronic shareholder forums. We are only clarifying the liability provisions for establishing, maintaining, or operating such a forum and providing an exemption for forum communications that fall within the broad definition of a solicitation.

#### **D. Reporting, Recordkeeping, and Other Compliance Requirements**

The amended rules do not impose any new reporting, recordkeeping, or compliance requirements on small entities. In fact, a small entity is not required to take

any reporting or recordkeeping action or to comply with any other new requirements, unless it chooses to rely on the new Rule 14a-2(b)(6) exemption. If a small entity or shareholder posts information on a forum in reliance on Rule 14a-2(b)(6), and later solicits the power to act as a proxy for a shareholder, it will need to determine whether any earlier postings remaining on the forum after the Rule 14a-2(b)(6) exemption no longer is available must be filed as soliciting materials.<sup>66</sup> Regardless, if small entities choose to do nothing regarding electronic shareholder forums, the amended proxy rules have no additional reporting, recordkeeping, or other compliance requirements that they must follow.

#### **E. Agency Action to Minimize Effect on Small Entities**

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Our objective in adopting the amendments is to facilitate electronic shareholder forums by clarifying that participation in a forum is exempt from most of the proxy solicitation rules if the participant satisfies all of the exemption's conditions, and that forum operators are not liable for third-party statements on their forums. The amendments impact small entities only if the entities choose to involve themselves in the forums by establishing, maintaining, or operating them or by posting information on or providing information to the forums. We considered alternatives to accomplish our stated objective, but we could not think of one that would make electronic shareholder forums more useful to small entities because these amendments are voluntary and affect small entities only if they chose to participate in them.

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<sup>66</sup> See 17 CFR 240.14a-1(l)(1)(iii).

## **VIII. STATUTORY BASIS AND TEXT OF THE RULES AND AMENDMENTS**

We are adopting amendments pursuant to Sections 14, 23(a), and 36 of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

### **List of Subjects**

#### **17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

#### **PART 240 – GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et. seq.; and 18 U.S.C. 1350, unless otherwise noted.

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2. Section 240.14a-2 is amended by adding paragraph (b)(6) to read as follows:

#### **§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.**

\* \* \* \* \*

(b) \* \* \*

(6) Any solicitation by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who

furnishes or requests, a form of revocation, abstention, consent, or authorization in an electronic shareholder forum that is established, maintained or operated pursuant to the provisions of § 240.14a-17, provided that the solicitation is made more than 60 days prior to the date announced by a registrant for its next annual or special meeting of shareholders. If the registrant announces the date of its next annual or special meeting of shareholders less than 60 days before the meeting date, then the solicitation may not be made more than two days following the date of the registrant's announcement of the meeting date. Participation in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that this exemption is no longer available, or is no longer being relied upon, provided that any such solicitation is conducted in accordance with this regulation.

3. Add § 240.14a-17 to read as follows:

**§ 240.14a-17 Electronic shareholder forums.**

(a) A shareholder, registrant, or third party acting on behalf of a shareholder or registrant may establish, maintain, or operate an electronic shareholder forum to facilitate interaction among the registrant's shareholders and between the registrant and its shareholders as the shareholder or registrant deems appropriate. Subject to paragraphs

(b) and (c) of this section, the forum must comply with the federal securities laws, including Section 14(a) of the Act and its associated regulations, other applicable federal laws, applicable state laws, and the registrant's governing documents.

(b) No shareholder, registrant, or third party acting on behalf of a shareholder or registrant, by reason of establishing, maintaining, or operating an electronic shareholder forum, will be liable under the federal securities laws for any statement or information

provided by another person to the electronic shareholder forum. Nothing in this section prevents or alters the application of the federal securities laws, including the provisions for liability for fraud, deception, or manipulation, or other applicable federal and state laws to the person or persons that provide a statement or information to an electronic shareholder forum.

(c) Reliance on the exemption in §240.14a-2(b)(6) to participate in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that the exemption in §240.14a-2(b)(6) is no longer available, or is no longer being relied upon, provided that any such solicitation is conducted in accordance with this regulation.

By the Commission.

Nancy M. Morris  
Secretary

Dated: January 18, 2008