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Part IV

Securities and Exchange Commission

17 CFR Part 240

**Universal Internet Availability of Proxy
Materials; Proposed Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–55147; IC–27672; File No. S7–03–07]

RIN 3235–AJ79

Universal Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the proxy rules under the Securities Exchange Act of 1934 that would require issuers and other soliciting persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials. In a separate release, we concurrently are adopting rules that allow issuers and other soliciting persons to voluntarily furnish proxy materials to shareholders in this manner. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications.

DATES: Comments should be received on or before March 30, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form <http://www.sec.gov/rules/proposed.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–03–07 on the subject line; or
- Use the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–03–07. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Internet Web site <http://www.sec.gov/rules/proposed.shtml>. Comments also are available for public

inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rules 14a–7,¹ 14a–16,² 14b–1,³ 14b–2,⁴ 14c–2,⁵ and 14c–3⁶ under the Securities Exchange Act of 1934.⁷

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¹ 17 CFR 240.14a–7.

² 17 CFR 240.14a–16.

³ 17 CFR 240.14b–1.

⁴ 17 CFR 240.14b–2.

⁵ 17 CFR 240.14c–2.

⁶ 17 CFR 240.14c–3.

⁷ 15 U.S.C. 78a *et seq.*

I. Introduction

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. We are proposing amendments to the proxy rules that would require issuers and other soliciting persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials.⁸ The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. We believe that universal Internet availability of proxy materials has the potential to enhance significantly the ability of investors to make informed voting decisions regarding the securities that they hold. In a companion release, we are adopting an Internet availability model that issuers and other soliciting persons may follow on a voluntary basis.⁹ We are considering making the universal Internet availability amendments effective for large accelerated filers, not including registered investment companies, on January 1, 2008,¹⁰ and for all other issuers, including registered investment companies, on January 1, 2009.

II. Description of Proposed Amendments

Under the proposal, an issuer that is required to furnish proxy materials to shareholders under the Commission's proxy rules would have to satisfy this requirement by posting its proxy materials on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing record holders with a notice

⁸ For purposes of this release, the term "proxy materials" includes proxy statements on Schedule 14A [17 CFR 240.14a–101], proxy cards, information statements on Schedule 14C [17 CFR 240.14c–101], annual reports to security holders required by Rules 14a–3 [17 CFR 240.14a–3] and 14c–3 [17 CFR 240.14c–3] of the Exchange Act, notices of shareholder meetings, additional soliciting materials, and any amendments to such materials. For purposes of this release, the term does not include materials filed under Rule 14a–12 [17 CFR 240.14a–12].

⁹ Release No. 34–55146 (Jan. 22, 2007).

¹⁰ A large accelerated filer, as defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2], is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as measured on the last business day of the issuer's most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.

informing them that the materials are available and explaining how to access those materials. Issuers and intermediaries also would be required to follow the universal Internet availability model¹¹ to furnish proxy materials to beneficial owners. Shareholders and other persons conducting their own proxy solicitations also would be required to follow the universal Internet availability model. Shareholders would retain the ability to request paper or e-mail copies for a particular meeting or to make a permanent request for proxy materials relating to all shareholder meetings.¹² By requiring universal Internet availability of proxy materials, the proposed amendments are designed to enhance the ability of investors to make informed voting decisions and to expand use of the Internet to ultimately lower the costs of proxy solicitations.

A. Universal Internet Availability Model for Issuers

Under the proposal, an issuer would be required to comply with the following requirements, which are substantially similar to the requirements that we are adopting under the voluntary model.¹³ First, the issuer would have to send a Notice of Internet Availability of Proxy Materials ("Notice") to shareholders at least 40 calendar days before the shareholder meeting date, or if no meeting is to be held, at least 40 calendar days before the date that votes, consents, or authorizations may be used to effect a corporate action, indicating that the issuer's proxy materials are available on a specified Internet Web site and explaining how to access those proxy materials.

The Notice would have to contain the same information that is required under the voluntary model, including the following:¹⁴

- A prominent legend in bold-face type that states:

"Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].

- This communication presents only an overview of the more complete proxy

materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

- The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].
- If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery."
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on and the issuer's recommendations regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site;
- (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;
- Any control/identification numbers that the shareholder needs to access his or her proxy card;
- Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement and annual report; and
- Information about attending the shareholder meeting and voting in person.

The Notice would have to be written in plain English. The Notice may contain only the information specified by the rules and any other information required by state law, if the issuer chooses to combine the Notice with any shareholder meeting notice that State law may require. However, the Notice may contain a protective warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy. The issuer would have to file its Notice with the Commission pursuant to Rule 14a-6(b)¹⁵ no later than the date that it first sends the Notice to shareholders.

An issuer would have to make all proxy materials identified in the Notice publicly accessible, free of charge, at the Web site address specified in the Notice on or before the date that the Notice is sent to the shareholder. The specified

Web site may not be the Commission's EDGAR system. The issuer also would have to post any subsequent additional soliciting materials on the Web site no later than the date on which such materials are first sent to shareholders or made public. The materials would have to be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.¹⁶

The proxy materials would have to remain available on that Web site through the conclusion of the shareholder meeting. An issuer also would have to provide shareholders with a method to execute proxies as of the time the Notice is first sent to shareholders. It may do so through a variety of methods, including providing an electronic voting platform or a toll-free telephone number for voting.¹⁷

An issuer would be required to provide copies at no charge to requesting shareholders. It also would have to allow shareholders to make a permanent election to receive paper or e-mail copies of proxy materials distributed in connection with future proxy solicitations of the issuer. Further, the issuer would have to provide a toll-free telephone number, e-mail address, and Internet Web site address as a means by which a shareholder could request a copy of the proxy materials for the particular shareholder meeting referenced in the Notice or make a permanent election to receive copies of the proxy materials on a continuing basis with respect to all meetings. The issuer also may include a pre-addressed, postage-paid reply card with the Notice that shareholders could use to request a copy of the proxy materials.

An issuer would not be permitted to send a proxy card to a shareholder until 10 calendar days or more after the date it sent the Notice to the shareholder, unless the proxy card is accompanied or preceded by a copy of the proxy statement and any annual report to security holders sent via the same medium. Issuers would be able to household the Notice and other proxy materials pursuant to Rule 14a-3(e).¹⁸ An issuer would have to maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing that Web site.¹⁹ An issuer also could not use any e-mail address provided by a

¹¹ In this release, we are referring to the proposal as the "universal Internet availability" model. This model is substantially similar to the "notice and access" model for electronically furnishing proxy materials referred to in Release No. 34-55146 that issuers and other soliciting persons may follow on a voluntary basis.

¹² A shareholder may revoke a permanent election to receive paper or e-mail copies at any time.

¹³ See 17 CFR 240.14a-16 [17 CFR 240.14a-16].

¹⁴ Appropriate changes must be made if the issuer is providing an information statement pursuant to Regulation 14C or seeking to effect a corporate action by written consent.

¹⁵ 17 CFR 240.14a-6(b).

¹⁶ See Section II.A.3 of Release 34-55146.

¹⁷ As noted above, such a telephone number may appear on the Web site, but not on the Notice.

¹⁸ 17 CFR 240.14a-3(e).

¹⁹ See Section II.A.1.b.iii of Release No. 34-55146.

shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder. The issuer also may not disclose a shareholder's e-mail address to any person other than the issuer's employee or agent to the extent necessary to send a copy of the proxy materials to a requesting shareholder. An issuer could not use the universal Internet availability model in the context of a business combination transaction.

Request for Comment

- What advantages would universal Internet availability of proxy materials have for investors, issuers and other soliciting persons? What disadvantages could the proposal have? How could any potential disadvantages be mitigated?

- Should we require issuers to follow the universal Internet availability model as proposed? If not, why not? Would requiring issuers to follow the universal Internet availability model impose significant costs on issuers? If so, what would they be? How could the proposal be modified to mitigate these costs? Would requiring issuers to follow the universal Internet availability model positively or negatively affect shareholder voting participation rates?

- Should we exempt certain types of issuers from the proposed universal Internet availability model? For example, should we exempt small business issuers? Should we require mutual funds, closed-end funds, business development companies and other investment companies to follow the model? Should the model be equally applicable to all types of shareholders and/or all types of solicitations except those relating to business combination transactions?

- Under the voluntary model, an issuer may choose not to rely on the universal Internet availability model if it conflicts with state law. We are not aware of any state law conflicts. Are there any state laws that would conflict with the universal Internet availability model?

- Should we modify any aspects of the universal Internet availability model? If so, how should the model be modified and why? Should there be any changes to the timeframes for sending the Notice, the contents of the Notice or the types of materials that can be sent with the Notice? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?

- Some proxy solicitations are not subject to the requirements of Section 14(a) of the Exchange Act, such as proxy

solicitations with respect to foreign private issuers. However, we understand that proxy solicitations relating to foreign private issuers generally are processed and distributed in accordance with the same procedures set forth in our proxy rules because intermediaries and their agents are not able to apply cost-effectively different procedures to exempt proxy solicitations. Would a universal Internet availability model create a burden on those issuers who are not subject to Section 14(a)? If so, how can those burdens best be addressed?

B. Implications of the Universal Internet Availability Model for Intermediaries

With respect to beneficial owners, the issuer or other soliciting person would have to provide each intermediary with the information necessary to prepare the intermediary's Notice in sufficient time for the intermediary to prepare and send its Notice to beneficial owners at least 40 calendar days before the shareholder meeting date.²⁰ The intermediary's Notice would contain generally the same types of information as an issuer's Notice, but would be tailored specifically for beneficial owners.²¹ Intermediaries would be required to prepare and send this tailored Notice to beneficial owners. The intermediaries also would be required to forward paper or e-mail copies to beneficial owners upon request. Finally, intermediaries would have to post their requests for voting instructions on an Internet Web site, permit shareholders to make a permanent election to receive paper or e-mail copies of the proxy materials, keep records of those elections, and deliver copies of the proxy materials according to those elections.

Request for Comment

- Should we make any modifications to the universal Internet availability model as it would apply to intermediaries if we adopt this proposal? If so, how should the model be modified and why? Should there be any changes to the timeframes for sending the intermediary's Notice, the

²⁰ A soliciting person other than the issuer must provide intermediaries with such information in sufficient time for the intermediaries to prepare and send the intermediary's Notice by the later of: (1) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or (2) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders. See Rule 14a-16(l)(2) [17 CFR 240.14a-16(l)(2)].

²¹ For a more complete discussion of the content of the intermediary's Notice, see Section II.B.2 of Release No. 34-55146.

contents of the intermediary's Notice or the types of materials that could be sent with the Notice? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?

C. Universal Internet Availability Model for Soliciting Persons Other Than the Issuer

A soliciting person other than the issuer also would be required to follow the universal Internet availability model. Consistent with the existing proxy rules and the voluntary model, the proposed rules treat such soliciting persons differently from the issuer in certain respects.

First, a soliciting person is not required to solicit every shareholder. It may select the specific shareholders from whom it wishes to solicit proxies. Under the proposed universal Internet availability model, a soliciting person other than the issuer would be able to choose to send Notices only to those shareholders who have not previously requested paper copies.²²

Second, soliciting persons other than the issuer would be required to send a Notice to shareholders by the later of:

- 40 calendar days prior to the shareholder meeting date or, if no meeting is to be held, 40 calendar days prior to the date that votes, consents, or authorizations may be used to effect the corporate action; or
- 10 calendar days after the date that the issuer first sends its proxy materials to shareholders.

Finally, if at the time the Notice is sent, a soliciting person other than the issuer is not aware of all matters on the shareholder meeting agenda, the Notice would have to provide a clear and impartial identification of each separate matter to be acted upon at the meeting, to the extent known by the soliciting person. The soliciting person's Notice also would have to include a clear statement that there may be additional agenda items that the soliciting person is unaware of, and that the shareholder cannot direct a vote for those items on the soliciting person's proxy card provided at that time. If a soliciting person other than the issuer sends a proxy card that does not reference all matters that shareholders will act upon at the meeting, the Notice would have

²² Under Rule 14a-7 [17 CFR 240.14a-7], an issuer is required to either mail the Notice on behalf of the soliciting person, in which case the soliciting person can request that the issuer send Notices only to shareholders who have not requested paper copies, or provide the soliciting person with a shareholder list, indicating which shareholders have requested paper copies. For a more complete discussion of the interaction of the model with Rule 14a-7, see Section II.C.4 of Release No. 34-55146.

to clearly state whether execution of the proxy card would invalidate a shareholder's prior vote using the issuer's card on matters not presented on the soliciting person's proxy card.

Request for Comment

- Should we require soliciting persons other than the issuer to follow the universal Internet availability model? If not, why not? Would the universal Internet availability model impose significant costs on soliciting persons other than the issuer? If so, what would they be and how could they be mitigated?

- Rule 14a-2(a)(6)²³ permits a soliciting person to solicit proxies without otherwise complying with Rules 14a-3 through 14a-15²⁴ by placing a newspaper advertisement which does no more than inform shareholders of (1) a source from which they may obtain copies of a proxy statement, proxy card and other soliciting materials, (2) the name of the issuer, (3) the reason for the advertisement, and (4) the proposals to be acted upon by shareholders. Should the universal Internet availability model apply to such solicitations? If so, how should it apply? In light of the amendments, should we keep such a model available to soliciting persons?

- Should we make any revisions to Rule 14a-7 to accommodate the universal Internet availability model?

- If we adopt the universal Internet availability model, should we modify any aspects of the model as it relates to soliciting persons other than the issuer? If so, how should the proposed model be modified and why? Should there be any changes to the timeframes for sending the Notice, the contents of the Notice or the types of materials that can be sent with it? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?

D. Option To Send Full Set of Proxy Materials With Notice Under the Universal Internet Availability Model

Under the voluntary model that we are adopting, issuers or other soliciting persons are obligated to provide a paper or e-mail copy of the proxy materials upon request to a shareholder to whom they have provided a Notice. Issuers and other soliciting persons are not allowed to send the Notice with any document other than a notice of shareholder meeting required under state law and a pre-printed, postage-paid reply card for

a shareholder to request a copy of the proxy materials.

Under the proposed universal Internet availability model, a full set of proxy materials, including a proxy statement, annual report (if required), and proxy card or request for voting instructions could accompany the Notice that is sent to shareholders and beneficial owners.²⁵ This would allow an issuer or other soliciting person that wants to furnish paper copies of the proxy materials to some or all of its shareholders in the first instance to do so in one delivery with the Notice. This is different from the voluntary notice and access model because presumably an issuer or soliciting person would not choose to rely on the model if it intended to furnish paper copies of the proxy materials to all of the shareholders it was soliciting. As this proposal would require an issuer to follow the universal Internet availability model, it is necessary to expressly provide a means for issuers that also wish to send paper copies of the proxy materials along with the Notice as part of the same delivery package to shareholders to do so under the model.

The proposal would not permit an issuer or other soliciting person to initially send the Notice with other proxy materials, unless it is accompanied by a full set of proxy materials.²⁶ For example, an issuer or other soliciting person would not be permitted to send initially only the Notice and a proxy card to shareholders.²⁷ Instead, it would have to send a full set of proxy materials with the Notice, or send only the Notice. An issuer or other soliciting person choosing to deliver a full set of proxy materials with the Notice would be permitted to revise its Notice to delete any reference to a shareholder's right to request copies of the materials because all required proxy materials already would have been sent to shareholders.

If an issuer or other soliciting person sends a full set of the proxy materials with the Notice, it need not comply with the deadlines in Rule 14a-16 for sending the Notice. Thus, if an issuer is

²⁵ The requirement in Exchange Act Rules 14a-3(b) and 14c-3(a) to furnish annual reports to security holders does not apply to registered investment companies [17 CFR 240.14a-3(b) and 240.14c-3(a)]. A soliciting person other than the issuer also is not subject to this requirement.

²⁶ A "full set" of proxy materials would contain (1) a proxy statement or information statement, (2) an annual report if one is required by Rule 14a-3(b) or Rule 14c-3(a), and (3) a proxy card or, in the case of a beneficial owner, a request for voting instructions, if proxies are being solicited.

²⁷ However, it may send the Notice and proxy card together 10 calendar days or more after it initially sends the Notice. See Rule 14a-16(h) [17 CFR 240.14a-16(h)].

unable or unwilling to meet the 40-day deadline, it still may begin its solicitation after that deadline provided that it accompanies its Notice with a full set of the proxy materials. Similarly, a soliciting person other than the issuer that fails to send its Notice by the later of 40 calendar days before the meeting date or 10 calendar days after the issuer first sends it proxy materials could begin its solicitation after that deadline if it accompanies its Notice with a full set of proxy materials.

We also propose to permit a registered investment company to send its prospectus and/or report to shareholders together with the Notice, with or without the proxy statement and form of proxy. While the proxy rules do not require registered investment companies to furnish annual reports to security holders with their proxy materials, under the Investment Company Act of 1940, registered investment companies are required to transmit a report to shareholders at least semi-annually.²⁸ In addition, many mutual funds send their prospectuses to their existing shareholders annually in order to meet prospectus delivery obligations with respect to additional share purchases. Without our proposal for registered investment companies, they would be required to deliver both their prospectuses and shareholder reports separately from the Notice, which could result in increased costs to fund shareholders.

Request for Comment

- Should issuers and other soliciting persons be allowed to accompany the Notice with a full set of proxy materials?

- Is there potential for confusion if issuers and other soliciting persons choose to deliver to shareholders a full set of proxy materials in paper, but also send a Notice to them? If an issuer chooses to send a full set of the proxy materials with the Notice to a shareholder under this option, should the rules permit the issuer to incorporate the information required in the Notice into the proxy statement or some other document, rather than prepare a separate Notice?

- Should issuers, soliciting persons and intermediaries be permitted to remove the right to request copies if a full set of the proxy materials is included with the Notice, as proposed?

- Should registered investment companies be permitted to accompany the Notice with a prospectus and/or report to shareholders? If so, should they be permitted to do this without also including a proxy statement and

²⁸ 15 U.S.C. 80a-29(e).

²³ 17 CFR 240.14a-2(a)(6).

²⁴ 17 CFR 240.14a-3 through 240.14a-15.

form of proxy? Is there any other category of issuer for which a similar accommodation would be appropriate?

- The proposed deadlines for sending the Notice are intended to provide shareholders with sufficient time to request copies. If an issuer or other soliciting person is unable to meet the deadlines under the universal Internet availability model, should either be permitted to begin its solicitation after those deadlines have passed if a full set of proxy materials accompanied the Notice, as proposed?

- If an issuer or other soliciting person elected to send a full set of proxy materials with the Notice, should it be permitted to include additional soliciting materials with the Notice as well?

- Are there any complications that might arise with respect to intermediaries by providing issuers and other soliciting persons the option to provide a full set of proxy materials? If so, how could these complications be addressed?

III. Compliance Dates

Issuers and other soliciting persons may begin complying with the voluntary model on July 1, 2007. We are soliciting comment on compliance dates for the universal Internet availability model. If adopted, we are considering making the universal Internet availability model effective for large accelerated filers, not including registered investment companies, on January 1, 2008, and for all other issuers, including registered investment companies, on January 1, 2009. Such a tiered compliance regime may lessen any burden imposed by requiring smaller companies to follow the model.

In determining an appropriate compliance date for the universal Internet availability model, we are considering the extent to which we will be able to study the implementation of the voluntary model before adopting the universal Internet availability model. The industry's experience with these models will provide information on whether the rules are achieving their intended purposes. We welcome information from issuers and all other parties involved in the proxy distribution process. This information would include:

- The ability of issuers to provide shareholders with qualitatively better disclosure using the additional features available on the Internet, including XBRL, graphical, comparative and interactive features;

- The extent to which issuers and other soliciting persons avail themselves of opportunities to exploit other linked

data and resources, and make these available to shareholders in ways that are not possible with printed material;

- The impact on shareholder understanding of complex material;
- The effect of the model on proxy voting;
- The impact on costs of proxy solicitation;
- Shareholder voting data before and after adoption, including data on shareholder voting participation rates;
- The number of paper copies of proxy materials requested by shareholders;
- Any problems encountered with implementing the program, including problems encountered by smaller issuers; and
- Shareholder satisfaction with their choices of ways to communicate with the company.

Request for Comment

- What compliance dates would be appropriate for the universal Internet availability model? Should we permit at least one proxy season under the voluntary model to pass before requiring use of the universal Internet availability model? What compliance dates would give us and the market sufficient time to examine the performance of the voluntary model if we decide to convert to the universal Internet availability model after January 1, 2008?

- Should we adopt a tiered system of compliance dates for compliance with the universal Internet availability model, as we are considering doing? For example, should we require that some class of issuer, such as large accelerated filers, comply with the universal Internet availability model initially, and that other filers comply at a later date? If so, what should those dates be and which category of filers should go first?

- If we were to adopt a tiered system of compliance dates, how many tiers should there be? What would be the appropriate classes (*e.g.*, large accelerated filers, accelerated filers, or small business issuers) for each tier? Should we divide issuers differently?

- What compliance dates would be appropriate for mutual funds, closed-end funds, business development companies, and other investment companies?
- Should there be a different compliance date for soliciting persons other than issuers? If so, why and what compliance dates would be appropriate?

IV. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or
(3) Other matters that may have an effect on the proposals contained in this release.

With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

Certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"), including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. The titles for the collections of information are:²⁹

Regulation 14A (OMB Control No. 3235-0059)

Regulation 14C (OMB Control No. 3235-0057)

We requested public comment on these collections of information in the release proposing the notice and access model as a voluntary model for disseminating proxy materials,³⁰ and submitted them to the Office of Management and Budget ("OMB") for review in accordance with the PRA. We received approval for the collection of information. We are submitting a revised PRA analysis to OMB in conjunction with the release adopting the notice and access model as a voluntary model. In that release, we assumed conservatively that all issuers and other persons soliciting proxies would follow the voluntary model because the proportion of issuers and other soliciting persons that would elect to follow the model was uncertain.

The proposed rules would require all issuers and other soliciting persons to follow the model. Therefore, our preliminary estimate is that the rule amendments that we are proposing in this release will not impose any new recordkeeping or information collection requirements beyond those described in

²⁹In connection with the proposing release for the voluntary model, we described the proposed Notice of Internet Availability of Proxy Materials as a new collection of information, rather than a part of our existing collections of information related to Regulations 14A and 14C. However, we subsequently submitted to OMB a PRA analysis based on revisions to the Regulation 14A and Regulation 14C collections. Although we did not revise our burden estimates associated with the Notice, the collection of information approved by OMB related to revisions to existing collections of information (Regulations 14A and 14C) and therefore we refer to those collections of information in this PRA discussion.

³⁰Release No. 34-52926 (Dec. 8, 2005) [70 FR 74597].

the release adopting the voluntary model, or necessitate revising the burden estimates for any existing collections of information requiring OMB's approval. Further, our preliminary estimate is that the one significant modification to the notice and access model we are proposing for the universal Internet availability model, the option to provide a full set of proxy materials with the Notice, does not require us to modify our burden estimates for the Regulation 14A and 14C collections of information. We solicit comment on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed amendments.

VI. Cost-Benefit Analysis

A. Background

We are proposing revisions to the proxy rules under the Exchange Act to require issuers and other soliciting persons to follow the universal Internet availability model for furnishing proxy materials. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications.

B. Summary of Proposals

The proposals would provide a universal Internet availability model that would require issuers and other soliciting persons to furnish proxy materials by posting them on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access them. Under this model, shareholders may request copies of the proxy materials from the issuer. Shareholders receiving a Notice from a soliciting person other than the issuer may also request copies from that person. However, neither an issuer nor a soliciting person other than the issuer would have to provide copies on request if it chooses to send a full set of proxy materials, including the proxy statement, annual report (if required) and proxy card, with the Notice. The proposals also would require intermediaries to follow similar procedures to provide beneficial owners with access to the proxy materials.

C. Benefits

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to lower the costs of proxy solicitations, and to improve shareholder communications. The proposed amendments, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. As technology continues to progress, accessing the proxy materials on the Internet should increase the utility of our disclosure requirements to shareholders. Information in electronic documents is often more easily searchable than paper documents. Users are better able to go directly to any section of the document that they believe to be the most important. They also permit users to more easily manipulate data and enter data into analytical tools such as spreadsheet programs. Such tools enable users to compare relevant data about several companies more easily.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may encourage improved shareholder communications in other ways. Electronic innovations such as Internet chat rooms and bulletin boards may enhance shareholders' ability to communicate not only with management, but with each other. Such direct access may improve shareholder relations to the extent shareholders feel that they have enhanced access to management. Centralizing an issuer's disclosure on a Web site may facilitate shareholder access to other important information, such as research reports and news concerning the issuer. We believe that migrating proxy disclosure to the Internet and uniform use of the Internet for that purpose could ultimately lower the cost of soliciting proxies for all issuers.

In terms of paper processing alone, the benefits of the rule amendments are limited by the volume of paper processing that would occur otherwise. As we note in the companion adopting release, Automatic Data Processing, Inc. (ADP) handles the vast majority of proxy mailings to beneficial owners.³¹ ADP publishes statistics that provide useful background for evaluating the likely consequences of the rule amendments. ADP estimates that,

³¹ We expect savings per mailing to record holders to roughly correspond to savings per mailing to beneficial owners.

during the 2006 proxy season,³² over 69.7 million proxy material mailings were eliminated through a variety of means, including householding and existing electronic delivery methods. During that season, ADP mailed 85.3 million paper proxy items to beneficial owners. ADP estimates that the average cost of printing and mailing a paper copy of a set of proxy materials during the 2006 proxy season was \$5.64. We estimate that issuers and other soliciting persons spent, in the aggregate, \$481.2 million in postage and printing fees alone to distribute paper proxy materials to beneficial owners.³³ Approximately 50% of all proxy pieces mailed by ADP in 2005 were mailed during the proxy season.³⁴ Therefore, we estimate that issuers and other persons soliciting proxies from beneficial owners spent approximately \$962.4 million in 2006 in printing and mailing costs.³⁵

In the companion adopting release, we based our estimates on an assumption that issuers representing between 10% and 50% of proxy mailings would follow the notice and access model. Under our proposed universal Internet availability model, we estimate that the paper-related savings would be similar for firms that choose to mail full sets of proxy materials only to those investors who request them. Issuers that choose to mail full sets of proxy materials with the Notice would not realize any paper-related savings. Based on the assumption that 19% of shareholders would choose to have paper copies sent to them when an issuer relies on the notice and access model, we estimate that the proposal could produce annual paper-related savings ranging from \$48.3 million (if issuers who are responsible for 10% of all proxy mailings choose to mail proxy materials only to those who request them) to \$241.4 million (if issuers who are responsible for 50% of all proxy mailings choose to mail proxy materials only to those who request them).³⁶ This

³² According to ADP data, the 2006 proxy season extended from February 15, 2006 to May 1, 2006.

³³ 85.3 million mailings × \$5.64/ mailing = \$481.2 million.

³⁴ According to ADP, in 2005, 90,013,175 of 179,833,774, or 50%, of proxy pieces were mailed during the 2005 proxy season.

³⁵ \$481.2 million/50% = \$962.4 million.

³⁶ This range of potential cost savings depends on data on proxy material production, home printing costs, and first-class postage rates provided by Lexecon and ADP, and supplemented with modest 2006 USPS postage rate discounts. The fixed costs of notice and proxy material production are estimated to be \$2.36 per shareholder. The variable costs of fulfilling a paper requests, including handling, paper, printing and postage, are estimated

estimate excludes the effect of the provision of the amendments that would allow shareholders to make a permanent request for paper copies. That provision would enable issuers and other soliciting persons to take advantage of bulk printing and mailing rates for those requesting shareholders, and therefore should reduce the on-demand costs reflected in these calculations.

We estimate that approximately 19% of shareholders would request paper copies. Commenters on the initial Internet availability proposal provided alternate estimates. For example, Computershare, a large transfer agent, estimated that less than 10% of shareholders would request paper copies.³⁷ According to a survey conducted by Forrester Research for ADP, 12% of shareholders report that they would always take extra steps to get their proxy materials, and as many as 68% of shareholders report that they would take extra steps to get their proxy materials in paper at least some of the time. The same survey also finds that 82% of shareholders report that they look at their proxy materials at least some of the time. These survey results suggest that shareholders may review proxy materials even if they do not vote. During the 2005 proxy season, only 44% of accounts were voted by beneficial owners. Put differently, 56%, or 84.8 million accounts, did not return requests for voting instructions. Our estimate that 19% of shareholders would request paper copies reflects the diverse estimates suggested by the available data.

Although we expect the savings to be significant, the actual paper-related benefits would be influenced by several factors that we estimate would become less important over time. First, to the extent that some shareholders request paper copies of the proxy materials, the benefits of the amendments in terms of savings in printing and mailing costs would be reduced. Issuers are concerned that the cost per paper copy would be significantly greater if they have to mail copies of paper proxy

to be \$6.11 per copy requested. Assumptions about percentages of shareholders requesting paper copies are derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Our estimate of the total number of shareholders is based on data provided by ADP and SIA. According to SIA's comment letter, 78.49% of shareholders held their shares in street name. We estimate that the total number of proxy pieces mailed equals the number of pieces mailed to beneficial shareholders by ADP in 2005 divided by 78.49%, which equals 179,833,774 / 78.49%, or 229,116,797.

³⁷ See letter from Computershare.

materials to shareholders on an on-demand basis, rather than mailing the paper copies in bulk. Thus, if a significant number of shareholders request paper, the savings would be substantially reduced. Second, issuers may face a high degree of uncertainty about the number of requests that they may get for paper proxy materials and may maintain unnecessarily large inventories of paper copies as a precaution. As issuers gain experience with the number of sets of paper materials that they need to supply to requesting shareholders, and as shareholders become more comfortable with receiving disclosures via the Internet, the number of paper copies is likely to decline, as would issuers' tendency to print many more copies than ultimately are requested. This would lead to growth in paper-related savings from the rule amendments over time.

Additional benefits would accrue from reductions in the costs of proxy solicitations by persons other than the issuer. Under the proposal, persons other than the issuer also can rely on the notice and access model, but would be able to limit the scope of their proxy solicitations to shareholders who have not requested paper copies of the proxy materials. We expect that the flexibility afforded to persons other than the issuer under the proposal ultimately would reduce the cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a source of discipline in the corporate governance process.

The effect of the amendments of lessening the costs associated with a proxy contest would be limited by the persistence of other costs. One commenter on the proposed voluntary model noted that a large percentage of the costs of effecting a proxy contest go to legal, document preparation, and solicitation fees, while a much smaller percentage of the costs is associated with printing and distribution of materials.³⁸ However, other commenters suggested that the paper-related cost savings that can be realized from the rule amendments are substantial enough to change the way many contests are conducted.³⁹

Finally, some benefits from the proposal may arise from a reduction in what may be regarded as the environmental costs of the proxy solicitation process.⁴⁰ Specifically, proxy solicitation involves the use of a

significant amount of paper and printing ink. Paper production and distribution can adversely affect the environment, due to the use of trees, fossil fuels, chemicals such as bleaching agents, printing ink (which contains toxic metals), and cleanup washes. To the extent that paper producers internalize these costs and the costs are reflected in the price of paper and other materials consumed during the proxy solicitation process, our dollar estimates of the paper-related benefits reflect the elimination of these adverse environmental consequences under the proposed amendments.

D. Costs

An issuer's compliance with the proposed model, if adopted, would introduce several new costs into the process of proxy distribution for issuers that otherwise would choose not to follow the notice and access model voluntarily and their shareholders, including the following: (1) The cost of posting proxy materials on an Internet Web site and providing a means to vote on that Web site; (2) the cost of preparing, producing, and sending the Notice to shareholders; (3) the cost of processing shareholders' requests for copies of the proxy materials and maintaining their permanent election preferences; and (4) the cost to shareholders of printing proxy materials at home that would otherwise be printed by issuers.

Under the proposed rules, issuers and other soliciting persons would be required to post their materials on an Internet Web site and provide a means to vote on that Web site. We believe the cost of obtaining a Web site and posting materials on it would be minimal to issuers and other soliciting persons. The rules do not require elaborate Web site design. Posting a document on such a Web site and providing a means to vote, such as posting a telephone number on that Web site for voting, is a fairly simple and inexpensive process. We believe the costs of these requirements would be minimal.

A soliciting person, including an issuer, would be required to provide a means to vote on the Internet Web site. Although, as noted above, posting a telephone number on a Web site would impose minimal cost, the soliciting person would have to have a means for collecting those votes. Thus, at a minimum, the soliciting person would have to provide an automated system for collecting votes, either over the Internet or by telephone, or have people staffing telephones to receive the votes. We are soliciting comment on the cost of establishing such mechanisms for

³⁸ See letter from ADP.

³⁹ See letters from CALSTRS, Computershare, ISS, and Swingvote.

⁴⁰ See letter from American Forests.

accepting votes. An issuer would also have to maintain records of shareholders who have requested paper or e-mail copies for all future solicitations. In the companion release adopting the voluntary notice and access model, we estimated that this cost to issuers and intermediaries would be approximately \$9,977,500.⁴¹

Under the proposed rules, intermediaries would be required to follow similar requirements as would issuers, including preparing Notices, providing a means to vote and maintaining records of shareholders who have requested paper or e-mail copies for future solicitations. We are soliciting comment on those costs as well.

As we stated in the companion adopting release, the paper-related savings to issuers and other soliciting persons discussed under the benefits section above are adjusted for the cost of printing and sending Notices. If Notices are sent by mail, then the mailing costs may vary widely among parties. Postage rates likely would vary from \$0.14 to \$0.39 per Notice mailed, depending on numerous factors. In our estimates of the paper-related benefits above, we assume that each Notice costs a total of \$0.13 to print and \$0.29 to mail. Based on data from ADP and SIA, we estimate that issuers and other soliciting persons send a total of 229,116,797 accounts processed per year.⁴² In the companion release, we assume that only those firms that choose to adopt the notice and access model would incur these printing and mailing costs. Under the proposed universal Internet availability model, all issuers would be required to furnish each of its shareholders with a copy of the Notice. Firms that choose to mail full sets of proxy materials only to those investors who request them would incur the printing cost and cost of mailing the Notice separately from the proxy materials. Firms that choose to mail full sets of proxy materials with the Notice would incur the printing costs, but not the additional mailing cost. These printing costs represent the incremental cost of moving to universal Internet availability from the model in the

companion adopting release. If issuers who are responsible for 10% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them, the remaining 90% of issuers would incur the total cost of \$26.8 million to print the Notice. If issuers who are responsible for 50% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them, the remaining 50% of issuers would incur the total cost of \$14.9 million to print the Notice.⁴³

The universal Internet availability model also requires minimal added disclosures in the form of a Notice to shareholders, informing them that the proxy materials are available at a specified Internet Web site. In the companion adopting release, we assumed, for purposes of the PRA, that all issuers and other soliciting persons would elect to follow the procedures, resulting in a total estimated cost to prepare the Notice of approximately \$2,020,475.⁴⁴ Based on the percentage of issuers that we estimated would adopt the notice and access model, these costs could range between \$1,010,238 (if 50% of issuers adopted the notice and access model) and \$1,818,432 (if 10% of issuers adopted the notice and access model). The proposal also would require issuers and intermediaries to maintain records of shareholders who have requested paper and e-mail copies for future proxy solicitations. We estimate that this total cost to all issuers and intermediaries would be approximately \$9,977,500,⁴⁵ with an incremental cost due to the proposals of \$4,988,750 (if 50% of issuers adopted the notice and access model voluntarily), and \$8,977,500 (if

10% of issuers adopted the notice and access model voluntarily).

Issuers and their intermediaries would incur additional processing costs if the proposal is adopted. The proposal would require an intermediary such as a bank, broker-dealer, or other association to follow the proposed model if an issuer so requests. An intermediary that follows the proposed model would be required to prepare its own Notice to beneficial owners, along with instructions on when and how to request paper copies and the website where the beneficial owner can access his or her request for voting instructions. Since issuers reimburse intermediaries for their reasonable expenses of forwarding proxy materials and intermediaries and their agents already have systems to prepare and deliver requests for voting instructions, we do not expect the involvement of intermediaries in sending their Notices to significantly affect the costs associated with the proposal.

Under the proposed model, a beneficial owner would be required to request a copy of proxy materials from its intermediary. The costs of collecting and processing requests from beneficial owners may be significant, particularly if the intermediary receives the requests of beneficial owners associated with many different issuers that specify different methods of furnishing the proxy. We expect that these processing costs would be highest in the first year after adoption but would subsequently decline as intermediaries develop the necessary systems and procedures and as beneficial owners increasingly become comfortable with accessing proxy materials online. In addition, the proposal would permit a beneficial owner to specify its preference on an account-wide basis, which should reduce the cost of processing requests for copies. These costs are ultimately paid by the issuer.

Shareholders obtaining proxy materials online would incur any necessary costs associated with gaining access to the Internet. In addition, some shareholders may choose to print out the posted materials, which would entail paper and printing costs. We estimate that approximately 10% of all shareholders would print out the posted materials at home at an estimated cost of \$7.05 per proxy package. Based on these assumptions, the proposal is estimated to produce incremental annual home printing costs ranging from \$16 million (if issuers who are responsible for 10% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them) to \$80 million (if

⁴¹ In that release, we estimated that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimated the average hourly cost of issuer and intermediary personnel time to be \$125, resulting in a total cost of \$9,977,500 for issuer and intermediary personnel time. See Release No. 34-55146.

⁴² See www.ics.adp.com/release11/public_site/about/stats.html stating that ADP handled 179,833,774 in fiscal year 2005 and letter from SIA stating that beneficial accounts represent 78.49% of total accounts.

⁴³ $90\% \times 229,116,797 \times \$0.13 = \$26.8$ million; $50\% \times 229,116,797 \times \$0.13 = \$14.8$ million; We assume that the additional cost of mailing the Notice together with the full set of proxy materials is negligible.

⁴⁴ In the companion adopting release, we estimated, for PRA purposes, that issuers would spend a total of \$897,975 on outside professionals to prepare this disclosure. We also estimated that issuers would spend a total of 8,980 hours of issuer personnel time preparing this disclosure. We estimated the average hourly cost of issuer personnel time to be \$125, resulting in a total cost of \$1,122,500 for issuer personnel time. This results in a total cost of \$2,020,475 for all issuers. The costs for posting the materials on a Web site are included in this calculation.

⁴⁵ In the companion adopting release, we estimated, for PRA purposes, that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimated the average hourly cost of issuer and intermediary personnel time to be \$125, resulting in a total cost of \$9,977,500 for issuer and intermediary personnel time.

issuers who are responsible for 50% of all current proxy mailings choose mail full sets of proxy materials only to those investors who request them).⁴⁶ Investors would have the option to incur no additional cost by either accessing the proxy materials online or requesting paper copies of the materials from the issuer.

E. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- What savings would issuers and other soliciting persons realize if they are required to follow the proposed model? Of those savings, which would be one-time savings and which would be annual savings?

- What added costs would issuers and other soliciting persons incur if they are required to follow the proposed universal Internet availability model? Of those costs, which would be one-time costs and which would be annual costs?

- Are there any other one-time or annual costs or benefits that we should consider?

- Our estimates of the paper-related savings associated with universal internet availability are based on those in our companion adopting release. Are our assumptions about the relevant printing costs and mailing costs, reasonable? In particular, would smaller issuers expect to realize similar savings?

- What proportion of shareholders would be expected to request paper copies? What proportion of beneficial owners would likely request paper copies from intermediaries rather than from issuers? Are there any issuers for which a high rate of paper requests might be anticipated? If so, are there any means, such as surveying shareholder interest in paper copies, that may mitigate such costs?

- Which issuers would choose to mail full sets of proxy materials? Would some issuers mail full sets of proxy materials to some shareholders and notices to others? If so, what proportions of shareholders would be sent each?

⁴⁶This range of potential home printing costs depends on data provided by Lexecon and ADP. See letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing cost, we assume that 50% of annual report pages are printed in color and 100% of proxy statement pages are printed in black and white. The estimated percentage of shareholders printing at home is derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Total number of shareholders estimated as above based on data provided by ADP and SIA. See letters from ADP and SIA.

- What is the typical cost for obtaining an Internet Web site and posting materials on that Web site? What is the typical cost for establishing an automated system for collecting votes or shareholder voting instructions through the Internet or by telephone? What would be the cost of staffing telephone lines to receive votes or voting instructions?

- Are there other viable means for providing a means to vote on an Internet Web site? If so, what are they, and what would be the cost of providing such voting means?

- What would be the cost of maintaining records of shareholders who have elected to receive paper or e-mail copies of proxy materials for future solicitations? Many issuers and intermediaries, or their agents, already have systems to maintain records of shareholders who have affirmatively consented to electronic delivery, and many intermediaries, or their agents, have systems to maintain records of beneficial owners who have objected to disclosure of their identity to issuers. Considering the fact that such entities already have systems designed to record shareholder preferences, what would the added cost be of maintaining records of shareholders who have elected to receive paper or e-mail copies of proxy materials in the future?

- What costs and benefits would intermediaries incur? Would all of these costs and benefits be passed on to issuers? Are there any one-time or annual costs for intermediaries that we should consider?

- What other benefits and costs would be associated with rules requiring compliance with the universal Internet availability model?

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act⁴⁷ 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 Act⁴⁸ and Section 2(c) of the Investment Company Act of 1940⁴⁹ require us, when engaging in rulemaking that requires us to consider or determine whether an action is

necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

In a companion release, we are adopting a substantially similar Internet availability model as a voluntary model. The proposed amendments would require all issuers and other soliciting persons to follow the universal Internet availability model for all proxy solicitations, other than those associated with business combination transactions. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to lower the costs of proxy solicitations, and to improve shareholder communications. Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. We believe that expanded use of electronic communications to replace current modes of disclosures on paper and physical mailings would increase the efficiency of the shareholder communications process. Use of the Internet permits technology developers to enhance a shareholder's experience with respect to such communications. It permits interactive communications at real-time speeds. Improved shareholder communications may improve relationships between shareholders and management. Retail investors may have easier access to management. In turn, this may lead to increased confidence and trust in well-managed, responsive issuers.

The proposal, if adopted, may have the effect of initially raising costs on issuers and other soliciting persons by requiring persons who otherwise would not have followed the model to follow it. The proposal may create other inefficiencies such as reducing shareholder voting participation and increased reliance on broker discretionary voting. We are considering these potential effects, but do not anticipate that they will be significant. Therefore, we are proposing the amendments, but also are requesting comment on these matters. We are also considering the effect of the proposal on competition and capital formation, including the effect that the proposals may have on industries servicing the proxy soliciting process. We do not anticipate any significant effects on capital formation. We also anticipate that some companies whose business

⁴⁷ 15 U.S.C. 78w(a)(2).

⁴⁸ 15 U.S.C. 78c(f).

⁴⁹ 15 U.S.C. 80a-2(c).

model is based on the dissemination of paper-based proxy materials may experience adverse competition effects from the proposal. The proposal may also promote competition among Internet-based information services. We request comment on those effects.

We request comment regarding the degree to which our proposed amendments would have competitively harmful effects on public companies, and how we could best minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects. We also request comment on the effects that the proposed amendments would have on efficiency and capital formation.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Exchange Act that would require issuers and other persons soliciting proxies to follow the universal Internet availability model for all proxy solicitations except for those associated with a business combination transaction.

A. Reasons for the Proposed Action

The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. We are concurrently issuing an adopting release that creates a voluntary model. We anticipate that increased usage of the model will enhance the ability of investors to make informed decisions and ultimately to lower the costs of proxy solicitations.

B. Objectives

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. Developing technologies on the Internet should expand the ways in which required disclosures can be used by shareholders. Electronic documents are more easily searchable than paper documents. Users are better able to go directly to any section of the document that they believe to be the most important. They also permit users to more easily manipulate data. It enables

users to more easily download data into spreadsheet or other analytical programs so that they can perform their own analyses more efficiently. A centralized Web site containing proxy-related disclosures may facilitate shareholder access to other relevant information such as research reports and news about the issuer.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may have the side-effect of improving shareholder communications in other ways. Internet tools, such as chat rooms and bulletin boards, may enhance shareholders' ability to communicate not only with management, but with each other. Such direct access may improve shareholder relations to the extent shareholders have improved access to management.

C. Legal Basis

We are proposing amendments to the forms and rules under the authority set forth in Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Exchange Act, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act, as amended.

D. Small Entities Subject to the Proposed Rules

The proposals would affect issuers that are small entities. Exchange Act Rule 0-10(a)⁵⁰ defines an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of \$5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 public companies, other than investment companies, that may be considered small entities.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.⁵¹ Approximately 157 registered investment companies meet this definition. Moreover, approximately 53 business development companies may be considered small entities.

Paragraph (c)(1) of Rule 0-10 under the Exchange Act⁵² states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal

year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2005, the Commission estimates that there were approximately 910 broker-dealers that qualified as small entities as defined above.⁵³ Small Business Administration regulations define "small entities" to include banks and savings associations with total assets of \$165 million or less.⁵⁴ The Commission estimates that the rules would apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of \$165 million or less.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposals would require all issuers, including small entities, to follow the universal Internet availability model. Under the proposed amendments, all issuer and intermediaries would be required to prepare and disseminate a Notice of Internet Availability of Proxy Materials. The required disclosure in the Notice is information that would be readily available to the issuer. Issuers also would be required to post the proxy materials on a publicly accessible Web site, and issuers and intermediaries would be required to provide a means to execute a proxy or provide voting instructions, as applicable, on an Internet Web site. Issuers and intermediaries would be required to provide copies of the proxy materials to requesting shareholders. Issuers and intermediaries also would be required to maintain records to keep track of those shareholders who have made a permanent request for paper or e-mail copies. Issuers also may have to change their Web site and e-mail procedures to comply with the rules designed to safeguard addressing anonymity of persons accessing the Web site and misuse of shareholder e-mail addresses.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

⁵³ These numbers are based on a review by the Commission's Office of Economic Analysis of 2005 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

⁵⁴ 13 CFR 121.201.

⁵⁰ 17 CFR 240.0-10(a).

⁵¹ 17 CFR 270.0-10.

⁵² 17 CFR 240.0-10(c)(1).

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation or simplification of disclosure for small entities;
- The use of performance standards rather than design standards; and
- An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives.

The proposed amendments, if adopted, would require all issuers and intermediaries, including small entities, to follow the universal Internet availability model. We believe that in the long run, use of the Internet for shareholder communications not only may decrease costs for all issuers, but also may improve the quality of shareholder communications by enhancing a shareholder's ability to search and manipulate proxy disclosures. However, in the short term, we are considering a tiered system of compliance dates to minimize the burdens on smaller issuers, including small entities. If we adopt tiered compliance dates, we do not anticipate that issuers other than large accelerated filers would be required to comply with the requirements until January 1, 2009. This would provide smaller issuers more time to adjust to the amendments and learn from the experiences of larger filers.

Intermediaries that are small entities would also be subject to the amendments, if they are adopted. We are considering whether such entities should be exempt from the amendments. Such an exemption may create disparity in the way shareholders receive proxy materials. Shareholders owning securities through such intermediaries would not have the ability to choose the means by which they receive proxy disclosures.

We considered the use of performance standards rather than design standards in the proposed rules. The proposal contains both performance standards and design standards. We are proposing design standards to the extent that we believe compliance with particular requirements are necessary. However, to

the extent possible, we are proposing rules that impose performance standards to provide issuers, other soliciting persons and intermediaries with the flexibility to devise the means through which they can comply with such standards.

We are requesting comment on whether separate requirements for small entities would be appropriate. The purpose of the amendments is to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. Exempting small entities would not be consistent with this goal. However, as noted above, we are considering providing more time for small entities to comply with the proposed requirements. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objectives of the proposed rules.

H. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,⁵⁵ a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

⁵⁵ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing the amendments pursuant to Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, 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.

* * * * *

§ 240.14a-7 [Amended]

2. Amend § 240.14a-7 by removing Note 3 to § 240.14a-7.

3. Amend § 240.14a-16 by:

- a. Revising paragraphs (a), (e)(2)(i)(B), (e)(2)(ii), (f)(2)(i), (f)(2)(ii), (h), the introductory text of paragraph (l) and paragraph (l)(2);
- b. Adding paragraphs (e)(2)(iii), (f)(2)(iii), (f)(2)(iv), and (j)(5); and
- c. Removing paragraph (n).

The revisions and additions to read as follows:

240.14a-16 Internet availability of proxy materials.

(a)(1) A registrant shall furnish a proxy statement pursuant to § 240.14a-3(a) and an annual report to security holders if required by § 240.14a-3(b) to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or

if no meeting is to be held, 40 calendar days or more prior to the date that votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section; provided, that if the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement, annual report to security holders, if required pursuant to § 240.14a-3(b), and form of proxy pursuant to paragraph (f)(3) of this section, the registrant need not comply with the timing requirements of this paragraph (a)(1).

(2) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare and send a Notice to beneficial owners at least 40 calendar days before the meeting date; provided, that if the registrant provides the record holder or respondent bank with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a-3(b) pursuant to paragraph (f)(3) of this section, to be concurrently sent with the record holder's or respondent bank's Notice of Internet Availability of Proxy Materials, the registrant need not comply with the timing requirements of this paragraph (a)(2).

* * * * *

- (e) * * *
(2) * * *
(j) * * *

(B) The registrant is not soliciting proxy or consent authority, but is furnishing an information statement pursuant to § 240.14c-2;

(ii) The registrant may include a statement on the Notice to educate security holders that no personal information other than the identification or control number is necessary to execute a proxy; and

(iii) If the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement, annual report to security holders, if required under § 240.14a-3(b), and form of proxy pursuant to paragraph (f)(2)(iii) of this section, the Notice of Internet

Availability of Proxy Materials need not contain:

(A) A legend relating to security holder requests for copies of the documents; and

(B) Instructions on how to request a copy of the documents.

- (f) * * *
(2) * * *

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials;

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials;

(iii) Any other type of security holder communications provided that such transmission includes all of the following documents:

- (A) A copy of the proxy statement;
(B) A copy of the annual report to security holders if required by § 240.14a-3(b); and
(C) A form of proxy; and
(iv) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a-29(e)) and the rules thereunder.

(h) The registrant may send a form of proxy to security holders 10 calendar days or more after the date it first sent the Notice of Internet Availability of Proxy Materials to security holders if:

* * * * *

(1) The form of proxy is accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by § 240.14a-3(b) pursuant to paragraph (f)(2)(iii) of this section, or

(2) The form of proxy is accompanied by a copy of the Notice of Internet Availability of Proxy Materials.

* * * * *

- (j) * * *

(5) A registrant need not comply with paragraphs (j)(1) and (j)(2) of this section if it sends a copy of the proxy statement, annual report to security holders if required by § 240.14a-3(b) and form of proxy pursuant to paragraph (f)(3)(ii) of this section.

* * * * *

(l) A person other than the registrant soliciting proxies shall follow the requirements imposed on registrants by this section, provided that:

* * * * *

(2) A soliciting person other than the registrant must send its Notice of Internet Availability of Proxy Materials by the later of:

(i) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date that votes, consents, or authorizations may be used to effect the corporate action; or

(ii) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders; provided, that if the soliciting person other than the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement and form of proxy pursuant to paragraph (f)(3) of this section, the soliciting person other than the registrant need not comply with the timing requirements of this paragraph (l)(2)

* * * * *

- 4. Amend § 240.14b-1 by:
a. Revising the introductory text of paragraph (d); and
b. Adding paragraph (d)(1)(iii).
The revision and addition read as follows.

§ 240.14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a-16(d), the broker or dealer shall:

- (1) * * *
(iii) The broker or dealer need not comply with the deadlines set forth in paragraphs (d)(1)(i) and (d)(1)(ii) of this section, if the registrant or other soliciting person provides the broker or dealer with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a-3(b), pursuant to § 240.14a-16(f)(3)(ii), to be concurrently sent with the broker's or dealer's Notice of Internet Availability of Proxy Materials.

* * * * *

- 4. Amend § 240.14b-2 by:
a. Revising the introductory text of paragraph (d); and
b. Adding paragraph (d)(1)(iii).
The revision and addition read as follows.

§ 240.14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a-16(d), the bank shall:

- (1) * * *

(iii) The bank need not comply with the deadlines set forth in paragraphs (d)(1)(i) and (d)(1)(ii), if the registrant or other soliciting person provides the bank with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a-3(b), pursuant to § 240.14a-16(f)(3)(ii), to be concurrently sent with the bank's Notice of Internet Availability of Proxy Materials.

* * * * *

6. Amend § 240.14c-2 by revising paragraph (d) to read as follows:

§ 240.14c-2 Distribution of information statement.

* * * * *

(d) A registrant may transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a-16; provided, however, that the registrant shall revise the information required in the Notice of Internet Availability of Proxy Materials, including changing the title of that notice, to reflect the fact that the registrant is not soliciting proxies for the meeting.

7. Amend § 240.14c-3 by revising paragraph (d) to read as follows:

§ 240.14c-3 Annual report to be furnished security holders.

* * * * *

(d) A registrant may furnish an annual report to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a-16.

Dated: January 22, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

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