



February 13, 2006

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Internet Availability of Proxy Materials
File Number S7-10-05; 70 FR 74598 (December 15, 2005)

Dear Ms. Morris:

America's Community Bankers ("ACB")¹ is pleased to comment on the proposed rule issued by the Securities and Exchange Commission ("Commission") that would permit issuers and other persons to furnish proxy materials to shareholders by providing shareholders with notice of availability of proxy materials and posting proxy materials on an Internet Web site.

The proposed amendments to the proxy rules under the Securities Exchange Act of 1934 would provide an alternative to the existing method of proxy material distribution. The Commission has proposed a "notice and access" model whereby a Notice of Internet Availability of Proxy Materials ("NOIA") would be sent by issuers to shareholders stating that proxy materials are available electronically on an Internet Web site and explain how to access them. The NOIA would be required to provide a clear and impartial identification of the matters to be acted upon at the shareholders' meeting, and a toll-free telephone number or e-mail address as to where a shareholder may request a copy, paper or e-mail, of the proxy materials at no charge. Issuers would not be required to use the new delivery system for all proxy materials but could furnish some materials electronically and others as paper documents. Use of the "notice and access" model would be effective only with respect to a single shareholder meeting, and the proposed rules would not affect any state law requirements concerning proxy content and solicitation.

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

ACB Position

ACB supports the Commission's proposed amendments to permit issuers to post proxy materials on a publicly accessible Internet Web site using the "notice and access" model and the NOIA. Proxy materials are the last of issuer filings with the Commission to be made available to the public via the Internet. The proposed rule allows issuers to take advantage of the growth of the Internet and electronic communications in the proxy solicitation and distribution process. The use of the Internet for distribution of proxy materials would significantly reduce the costs of printing and mailing these materials to shareholders and thereby reduce the cost and regulatory burden for ABC's publicly traded members as well as all other publicly traded companies.

We support Internet distribution of proxy materials. We have been advised that Internet technology is sufficiently widespread and available to issuers, shareholders and intermediaries, so that the proposed amendments are a viable option for the transmission, access, download and printing of proxy materials. All proxy materials can be converted to a portable document format and transmitted via the Internet, including the "glossy annual report," where the documents can be read or printed. We recommend that to simplify the distribution process, all proxy materials requested electronically be posted electronically. In addition, all materials posted on the Internet should be substantially identical to the paper copies of the materials.

We also support the Internet distribution of proxy materials as an alternative to the existing method of proxy material distribution without replacing that method. This gives issuers the flexibility to determine the delivery method that best works for their company and their shareholders. Smaller public companies are best able to determine whether their technology is capable of transmitting proxy materials via the Internet to shareholders. In addition, individual issuers are best suited for knowing their shareholders and determining whether they should use the Internet or paper delivery of proxy materials. For example, our members raised concerns that their senior shareholders may not have access to the Internet or may not be Internet savvy to be able to obtain and vote proxy materials using the Internet. These shareholders often prefer paper copies of proxy materials. In addition, we approve of the flexibility in the proposal to accommodate shareholders who wish to receive paper copies of proxy materials. Under the proposed amendments, a shareholder upon receipt of the NOIA may request a paper copy of the proxy materials without charge by calling a toll-free telephone number.

Although we support the Commission's proposed amendments, we believe that it is unnecessarily complex and could be simplified. First, the "notice and access model" should be available to all shareholders of all issuers with no limitations on its use. Allowing some shareholders to receive proxy materials via the Internet and not others would unduly complicate the process. The Commission also has proposed allowing issuers to provide proxy materials through multiple mailings and combinations of electronic and paper delivery. For example, under the proposed rules, an issuer is permitted to furnish proxy materials via the Internet but may furnish the annual report by U.S. mail. We believe that if an issuer chooses to furnish proxy materials electronically,

then all of the proxy materials should be provided using that medium. If a shareholder requests a paper copy through the U.S. mail, then all subsequent proxy materials for that particular shareholder meeting distributed to that shareholder should be through the U.S. mail.

In addition, we strongly recommend that the proxy card only accompany the proxy statement and use the same delivery medium as the proxy statement. The proxy card should not accompany the NOIA as proposed. An issuer should send the NOIA to the shareholder separately from all other communications including the proxy card. The NOIA is notice to the shareholder of the meeting and how proxy materials may be obtained. The shareholder can then access the proxy materials and proxy card on the Internet Web site or request a paper copy of the materials that would include the proxy statement and proxy card. The shareholder should not vote the proxy card until the shareholder has access to all of the proxy materials. The Commission should simplify the process for proxy card delivery and require that the proxy card always be furnished with the proxy statement.

Finally, we are concerned with the security of the voted proxy card. Once again, if a shareholder elects to obtain proxy materials through the Internet, then the proxy card should only be voted through the Internet. If the shareholder requests paper copies of proxy materials then the proxy card only should be voted as a paper copy. We suggest that one way to secure the proxy card and vote is by issuing to the shareholder a pin number or some other type of identifying number, other than social security or tax ID number, that would be unique to that shareholder and unique to that particular shareholder meeting. We are concerned with the authentication of shareholders and the security of electronic voting procedures.

Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at (202) 857-3186 or via e-mail at slachman@acbankers.org.

Sincerely,



Sharon H. Lachman
Regulatory Counsel

