OPERS Ohio Public Employees Retirement System
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Sent via email: rule-comments@sec.gov

February 10, 2006

Ms. Nancy Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: SEC Proposed Rule for Internet Availability of Proxy Materials (File No. S7-10-05)

Dear Ms. Morris:

The Ohio Public Employees Retirement System ("OPERS") is a $68.6 billion fund serving three quarters of a million Ohioans, making the system the 10th largest state pension fund in the U.S. Thank you for providing us with the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposed "notice and access" model ("Proposed Rule"), which appears to significantly change the existing default rule for furnishing proxy materials to shareholders.

We agree with the SEC's overall goal of updating the regulatory framework to take advantage of technological developments that may reduce the printing and mailing costs for issuers associated with furnishing proxy materials to shareholders. However, this objective must be balanced against the SEC's overall mission of protecting investors by ensuring that *all* investors can continue to easily receive disclosure materials and actively participate in the proxy voting process. For example, Regulation 14A of the Securities Exchange Act of 1934 requires that any party conducting a proxy solicitation must provide a *written proxy statement* containing the information specified in Schedule 14A. This disclosure requirement ensures that shareholders have the information they need in order to make informed decisions when acting by proxy.

Due to a number of practical and policy considerations discussed below, we strongly urge the SEC to further refine its Proposed Rule before making any changes to the existing rule. Any changes to the existing default rule should *not* require shareholders to take extra steps in order to continue to receive paper proxy materials, if that remains their default preference, and *should* permit sophisticated investors who have the capability to fully utilize technological advancements to "opt-in" under a pilot project under the SEC Proposed Rule. We also strongly recommend the Proposed Rule be amended to allow shareholders to *permanently* indicate their delivery preference for *all* proxy materials, including the proxy card so that it is not separated from the disclosure materials, subject to subsequent modification at a shareholder's request in the event of a future default preference change.

In addition, we recommend that the SEC take into consider some important findings from a recent shareholder survey conducted by independent research firm, Forrester Research, Inc., which indicates the negative outcome of shareholder participation in the proxy voting process *significantly declining* if the SEC Proposed Rules are adopted without modification. Highlights of the survey findings are as follows:

- Of those shareholders who currently receive annual reports and proxy voting information automatically, 73% of mail receivers and 52% of online receivers say they would *rarely or never take the extra step required* to get the information for each of their holdings;
- Under the SEC Proposed Rule, 38% of today's voters say they would be *less* likely to vote;
- 67% prefer the existing SEC process;
- 46% believe the new proposed process will be harder;
- Among shareholders who are online, less than half have broadband, which is a driver of financial online activities;
- Senior shareholders in the category of 50+ are less likely to be online with this group consisting of nearly half of all shareholders;
- Most online users prefer not to read online, they value paper records, and they feel paper mail is more secure and reliable;
- Lower income and senior shareholders in the category of 60+ often do not have current computer systems and also lack the technology they need to download and print efficiently, which accounts for over a third of all shareholders; and
- Rural and smaller market shareholders are less likely to be online, which accounts for a quarter of shareholders.

Maintaining the existing rules promotes full participation by *all* investors in the proxy voting process with a positive corollary decrease in broker votes under the New York Stock Exchange's 10-day rule, which strengthens the entire voting process. Ensuring integrity, reliability and confidentiality in the shareholder communication and proxy voting process is of utmost importance to investors.

Any new process implemented by the SEC *should* (i) enhance investor trust in the integrity of the voting process and ensure the accuracy of tabulation of the vote outcome (ii) ensure the privacy and confidentiality of beneficial shareholder information and transactions (iii) permit shareholders to continue to communicate with each other through a cost effective, independent third-party intermediary (iv) facilitate a process that permits only a reasonable amount of direct electronic and other communications from issuers to investors so as not to become unduly burdensome and (v) continue to reduce the costs of compliance and trading for all participants.

Any new process adopted by the SEC should *not* (i) place control of proxy distribution and the tabulation of *all* shareholder voting *solely* in the hands of issuer management where either an actual or perceived conflict-of-interest exists; (ii) disclose confidential investor information to issuers, issuers' agents, and other investors or (iii) shift costs from issuers to investors for distribution to, and voting by, Objecting Beneficial Owners who value and rely on confidentiality of ownership to efficiently execute trades of large blocks of shares.

Integrity, reliability, and confidentiality of the process would be significantly compromised if any changes were made to the existing process that would permit those who are most affected by the outcome of a vote by shareholders, issuers, to also be solely responsible for accurately tabulating all votes. The current shareholder communication and proxy voting process ensures integrity because it includes independent, third-party intermediaries whose job is to effectively distribute street proxies and process street votes without having any vested self-interest in the final vote outcomes and the subject matter related to the voting results. The current system efficiently and effectively serves the needs of all constituencies, including individual investors and smaller public companies. Moreover, the investing public benefits from having a centralized, street-side proxy process that provides higher standards of accuracy, integrity, and transparency.

We recommend the SEC consider conducting further study to follow-up on the findings from the Forrester Research survey before requiring any wholesale change in the existing shareholder communication and proxy process. The SEC should consider sponsoring a pilot project under the Proposed Rule for those investors that have the ability and desire to opt-in at the present time.

Thank you for your consideration. Should you have any questions or comments, please contact Cynthia Richson, Corporate Governance Officer, at 614.222.0398.

Sincerely,

Laurie Fiori Hacking

Laurie Fiori Hacking
Executive Director