**Securities Industry Association**
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February 13, 2006

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

Re: Proposed Rule Concerning Internet Availability of Proxy Materials
(Release Nos. 34-52926; IC-27182; File No. S7-10-05)

Dear Ms. Morris:

On behalf of the Securities Industry Association ("SIA")[1], we are pleased to submit this response to the request of the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") for comments on the proposed rule relating to Internet Availability of Proxy Materials (the "Proposed Rule"). *See* Release No. 34-52926 (Dec. 8, 2005) (the "Release").

**Executive Summary**

- **The SIA supports the Commission's goals to reduce proxy delivery costs and to enhance shareholder participation in corporate democracy.**
- **The current system for delivering proxies to 80 percent of shareholders -- those holding in "street name" -- has proven to be very efficient and cost-effective. Any changes to that system should be built upon its existing strengths and should not conflict with the current infrastructure. This current system permits shareholders -- not issuers -- to provide brokers standing instructions for delivery of proxy materials for all securities held in each shareholder account. The Proposed Rule conflicts with key aspects of**

1 The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at www.sia.com.)

to this partnership by working with individual issuers and with affinity groups representing groups of issuers, as well as other interested parties.[3] For your convenience, we attach as Exhibit I a chart that describes shareholders by categories such as record holders, beneficial owners that hold in street name, institutional investors, and individual investors.

## II. The Current Proxy Delivery System for Beneficial Owners Works Well and is Cost-Effective; Any Change Should Utilize the Strengths of the Current System.

Any changes to the current street name proxy communication system should be built upon the strengths of the existing system and should not conflict with the current infrastructures. Among other things, the current structure allows beneficial owners to select a preferred delivery method for all information relating to each customer account. Standing delivery instructions are provided for each account. Any changes to this structure -- such as allowing each issuer to alter a customer's chosen delivery method on a year-to-year basis -- will disrupt the proxy delivery system and increase the cost for issuers and ultimately for shareholders. The current street name proxy communication system has, in fact, significantly reduced costs. As will be detailed below and in Exhibit II to this letter, in the 2005 proxy season (February 15-May 1), the delivery of over 62.3 million sets of proxy materials were eliminated at a savings of approximately $370.7 million.[4] Moreover, during the period from 2001 through 2005, broker intermediaries and others increased eliminations of proxy material deliveries to beneficial owners by 16 percent to 39 percent. In calendar year 2005 (as opposed to just the 2005 proxy season), the elimination of proxy material deliveries (through methods described below) resulted in a savings of $612 million.[5] *See* Exhibit II.

### A. The Current Proxy Delivery Model for Street Name Securities Works Well and Has Achieved Major Savings to Date.

Beneficial owners who hold their shares in street name represent approximately 80 percent of total shareholders and represent approximately 85 percent of shares outstanding. The high percentage of ownership in street name reflects the success of several decades of concerted effort among the securities regulators, broker intermediaries, issuers, The Depository Trust & Clearing Corporation, and others. Together, these groups achieved the goal of increasing the efficiency, and decreasing the costs, of processing securities transactions. Among other things, the high percentage of street name ownership enable the U.S. capital markets to process very high volumes of securities transactions on a daily basis with a minimal number of errors and a relatively minimal cost.

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3 In providing these comments to the Proposed Rule, the SIA has strived to maintain a balanced viewpoint. The SIA has learned in the past that there are a number of perspectives within the issuer, intermediary and investor constituencies that must be considered and brought into balance when recommending changes to the proxy process. Among other things, the size of the issuer, intermediary or investor clearly determines perspective, as does the mix of the shareholder base between institutional and individual investors.

4 These figures are based upon data published by ADP that states that the average cost per set of proxy materials was $5.95. ADP recently updated this amount to $5.33.

5 This calculation is based upon the $5.33 average cost per set of proxy materials.

the use of electronic media to provide information to investors, it believes that it is important to consider the context of the information. For example, if an investor has a direct interest in the information (*i.e.*, it relates to an immediate or concurrent investment decision) that information should be made available quickly and efficiently -- and the Internet is an ideal means to accomplish that goal. If, however, the information is provided in a more passive or indirect context -- *i.e.*, it does not necessarily relate to an immediate or concurrent investment decision -- the Internet may not be the best delivery method for a segment of investors. The SIA believes that proxy materials may, for some investors, fall into the latter category and, as a result, some investors may not have the same interest or motivation to access proxy materials via the Internet.

In accordance with the above principles, the SIA urges the SEC to consider an approach whereby beneficial owners would establish a default delivery method for all proxy materials relating to companies whose securities are held in any one account. Beneficial owners could express their account delivery preferences in a variety of ways. For example, the choice could be made when opening a new account, when broker intermediaries receive updated customer information,[8] or through the joint efforts of issuers and intermediaries. For those investors who do not affirmatively express a delivery preference, a default that facilitates easy access or delivery should be adopted. By allowing beneficial owners to make a choice, rather than imposing an issuer's decision on them, it is more likely that beneficial owners will continue to participate in the corporate democracy system. An approach that allows investors to elect a delivery method would, moreover, be more equitable for those persons who do not have Internet access or who do not want to receive proxy materials in an electronic format. Instead, such shareholders should be allowed to elect to continue to receive printed proxy materials through the U.S. mail.

Finally, to avoid any "disconnects" between the Proposed Rule and the current proxy delivery process, any "notice and access" approach should be based upon the well established delivery infrastructures that have been used by broker intermediaries for years. In general, broker intermediaries code customer accounts to signal whether proxy materials are to be furnished through the U.S. mail or electronically. This coding is maintained on an account-by-account basis, not an issuer-by-issuer basis. For example, if a customer holds shares of IBM and GM in her account, proxy materials would be sent, based upon account coding, through the mail or electronically. It would be expensive and difficult, if not impossible, to code materials relating to IBM to be sent by mail while coding the materials relating to GM to be sent electronically. Moreover, the suggested approach would allow issuers and intermediaries to reasonably estimate the number of printed materials needed.

The suggested approach would reduce the number of requests for printed materials that issuers and intermediaries receive. This, in turn, would reduce the staff that intermediaries would be required to maintain. If the Proposed Rule is adopted, broker intermediaries will need to be prepared to respond to requests for printed proxy materials from their beneficial owner

8 As you know, broker intermediaries request customers to update account information and investment objectives at least every 36 months in accordance with Rule 17a-3(a)(17) of the Securities Exchange Act of 1934.

the shareholders meeting. This would, in effect, notify beneficial owners that their votes would be void unless received by that date.

### C. Issuers Should Be Required to Maintain Certain Restrictions on Their Websites to Protect the Proxy Voting Process.

It would be inappropriate to prohibit beneficial owners from visiting an issuer's website, but it is important that any SEC rule provide mechanisms to ensure (i) that only record holders -- not beneficial owners holding in street name -- be able to request or access proxy cards from the issuer and (ii) that the privacy rights of beneficial owners who visit an issuer's website are protected.

First, it is, of course, of paramount importance that the sanctity of the voting process be protected. By prohibiting issuers from providing proxy cards to beneficial owners who hold in street name, the Commission would reduce the risk that beneficial owners would receive and execute proxy cards instead of -- or in addition to -- intermediary voting instructions. The assurance of accurate proxy voting is the foundation of corporate democracy and the Proposed Rule should not unintentionally undermine the integrity of the voting process. Indeed, the SIA has been working closely with the New York Stock Exchange (the "NYSE") and others to ensure that the tabulation of investor votes is managed to ensure accuracy, and we are concerned that these efforts may be damaged if beneficial owners have access to proxy cards. *See generally* Letter to Anand Ramtahal of the NYSE from Donald D. Kittell of the SIA, dated Apr. 26, 2005 (http://www.sia.com/2005_comment_letters/6136.pdf). Moreover, if a beneficial owner were to submit a proxy card in lieu of voting instructions, it would be impossible for intermediaries to accurately reconcile votes in a manner designed to ensure that overvoting does not occur. Accordingly, precautions must be taken to ensure that this does not happen.

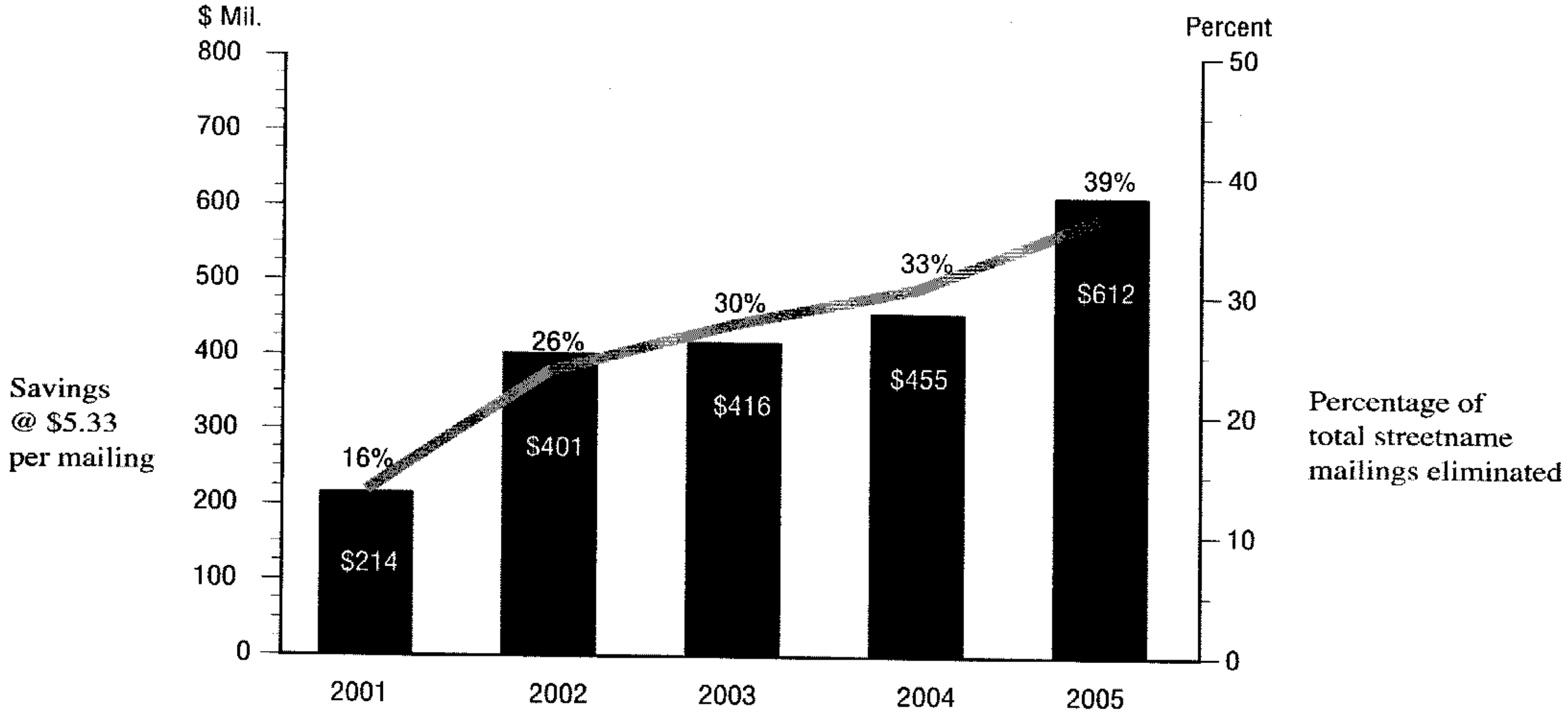
Second, any changes to the proxy delivery system should be designed to protect the privacy rights of beneficial owners. To meet that goal, issuers should be prohibited from using cookies or other surveillance mechanisms to identify persons that access proxy materials on an issuer's website. This is of particular concern for persons who object to having their identities revealed to issuers ("objecting beneficial owners" or "OBOs"). Although the number of OBOs vary from issuer to issuer, approximately 31 percent of brokerage account owners object to revealing their identities. *See* Exhibit I. Accordingly, the SIA believes that the Proposed Rule should prohibit issuers from requesting proof of a person's status as a beneficial owner and should prohibit issuers from using any means to identify such persons. Indeed, issuers should only be allowed to request record holders to identify themselves.

### D. Beneficial Owners' Access to Proxy Voting Materials Should Be Provided by Intermediaries.

According to the Proposed Rule, a beneficial owner may request delivery of proxy materials from either the company or the intermediary, at the beneficial owner's option. The SIA believes that it is important that the rule ensure that issuers do not provide proxy cards to

Exhibit II

# Savings to Issuers
# Streetname Proxy Distributions




***Savings result from:***

- Investment Management & Specialized Processing
- Internet (Proxy Vote)
- Institutional Processing (Proxy Edge)
- Householding and Consolidation

Source: ADP