



S71005-49

Tuesday, 3 January 2006

Mr. Jonathan G.Katz
Secretary
Securities and Exchange Commission
100F street
NE Washington D.C.
20549-9303

Re : Proxinvest's comments to the file S7-10-05 "notice and access" consultation

Dear Sir :

Proxinvest is a leading French proxy advisory firm, a founding member of the ICGN and a partner to the European Corporate Governance Service Ltd. We work exclusively for investors and provide them with advisory services based on the interest of all shareholders.

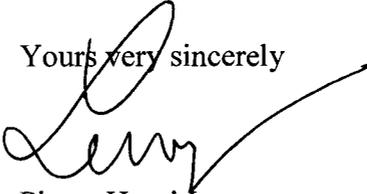
We have been in 1996 certainly the first world proxy service provider to operate an open web site and have successfully invited our clients to use the web for an efficient and reasonable way to exercise their voting rights and been always active in considering the best solutions for shareholders.

However in such matter, the immediate interest of one company's shareholders should not be only considered, as over-protection for shareholders could lead as we all know to heavy administrative, banking and reporting burden for companies and indirectly affect negatively the cost of capital. As no sacrifice to the neutrality or fairness of the voting process is to be accepted, limits to the costs of service to the investors can certainly be accepted as the first service shareholders need is the creation of value over time rather than any over-extended free information flow between companies and shareholders.

At Proxinvest we have searched since a long time the best available uses of internet for the exercise of voting rights and the process of other corporate actions with the highest consideration for 1/ the effective shareholding of the participants 2/ the avoidance of conflict

of interests during the decision and transmission process. All this leads us to fully support the direction of the "notice and access" model with only one reservation.

Answering to the SEC consultation, we dare to suggest an additional avenues in shareholders identification, inviting our US friends to avoid the trap of some French outmoded and ill-founded solutions (blocking of shares, permanent registration of shareholders) and to take benefit from the French emerging practice and regulation following the Mansion AMF report (registration in Day minus 3 before the meeting thanks to the custody chain).

Yours very sincerely

Pierre-Henri Leroy
Président

PROXINVEST ANSWERS

I/ Yes, internet access has become sufficiently widespread to make a "notice and access" model for furnishing proxy materials a viable model. Yes the means by which most shareholders access the Internet are sufficient to access lengthy documents such as annual reports, proxy statements, and information statements. Investors would not be excessively burdened by having to download and print these documents, besides most of them would be offered to access :

- 1/ binding summaries from the issuer
- 2/ non binding summaries of these documents as released by third parties such as press or proxy agencies.

Shareholders do have sufficient access to broad-band technology to make the proposal described in this release feasible, if not they would just have to request to receive the paper documents. The proposed model should therefore not be based on obtaining a shareholder's consent.

II/ The "notice and access" model should be available with respect to all shareholders of all issuers, with no limitations on its use. The availability of the "notice and access" model should not depend on the nature of the issuer and be available with respect to all shareholders of all issuers. Mutual funds, closed-end funds, business development companies, and other investment companies should be permitted to use the "notice and access" model.

III/ The proposed means by which a shareholder can request a copy of the proxy materials appears appropriate, the issuer's provision of an e-mail address from which shareholders can request copies should be optional. The rules should expressly reference other appropriate means by which shareholders can request a copy of the proxy materials, and yes the rules should specifically require that the issuer provide shareholders with a postage paid, pre-addressed reply card to request a copy of the materials, it is a limited cost as no reasonable modern investor with bother receiving by mail a documentation which he can read and download from the web.

Issuers should be permitted to household the Notice of Internet Availability of Proxy Materials, and additional information if relevant to the meeting agenda or to the corporate action should be compulsorily described in the Notice of Internet Availability of Proxy Materials and included in the download.

The Notice should compulsorily contain "a clear and impartial identification" of matters to be acted upon. Even if the SEC do not intend the Notice to become a means of persuading shareholders how to vote, it should be the duty of the issuer is to send all the legal material coming from the Board's party (such as the company's Board report , the current prospectus or profile to accompany the proxy card) and from the dissident parties, including supporting statements, subject top the company having received these. Issuers should be requested to apply plain English principles to the Notice of Internet Availability of Proxy Materials. It is appropriate to impose a separate obligation on the issuer under Section 14(a) to provide a copy of the proxy materials to requesting shareholders, subject to a proper confirmation of their shareholding as only a small number of these will care to use this, but only one copy per shareholder. The filing of the Notice and of all these digital documents with EDGAR should be compulsory as EDGAR could act as a notary or legal data bank protecting the integrity of the process. We favour also the to require a second Notice if revised proxy materials are required to be furnished to shareholders.

IV/ PROXY CARDS : the rules rightly propose to permit an issuer to furnish a proxy card and the Notice of Internet Availability of Proxy Materials to shareholders separately and through the use of different media.

The problem with the proxy card (the paper or electronic document that will carry the final decisions of the individual shareholder) is that its validity should be based or subject to the best available shareholders identification process (for us Europeans the full chain of custodians) . Therefore, issuers can and should be allowed to freely issue proxy cards on paper or conversely in an electronic form, to be filled either by pen and wet signed or on electronic screens and to be subsequently subject to some kind of confirmation of signature through the custody chain. In contrast to the current US practice of early record dates, we Europeans favour the "late validation of proxy cards" under which the number of shares to be voted and attached to one proxy card can be confirmed as late as 48 hours (UK) or 3 days (France) before the meeting, therefore hours, days or weeks after the voting decision itself (see comments hereunder).

Shareholders will be more likely to access and review the proxy statement and annual report before voting if these documents are posted electronically on the Internet Web site and the proxy card should be made available simultaneously.

The SEC proposed model should happily not increase issuers' dependency on discretionary broker voting and should increase the amount of discretionary voting. There will be circumstances in which brokers or other intermediaries might be uncertain as to their ability to

cast discretionary votes (e.g., if a shareholder requests delivery of the proxy materials but has not sent voting instructions 10 days prior to the meeting) this type of double votes and other are certainly unavoidable especially under the US process : under the final confirmation by a custody chain the unique issuer voting site will avoid to send double registration requests and therefore double votes from the same investors profile.

But even the best European internet process using custody chain shareholding confirmations might receive two votes from the same shareholder (one internet and one paper for instance) in the rare case that the confirming chain of banks would have at any step confirmed twice the same shareholding for two differing profiles. If the conflict or double count is traced the issuer's registrar service should then check the validity of both votes received and if the chain of intermediaries have confirmed the shareholding attached to the two cards, the latest vote should be cast.

The inclusion of bar codes is not "per se" the modern process to identify and verify a shareholder's position. We assume that 80% of the voting shareholders will no longer use any paper vote : any shareholder voting will have filed a profile remitted to the issuer for the information of the AGM (we assume in Europe that all voting shareholders should accept to be disclosed to other shareholders at the meeting)therefore this profile will be used to be attached to a vote (possibly but not compulsorily a first checking of the shareholder's position could be requested through the chain of intermediaries and at the latest time (48 hours under CREST , D-3 under the French process) the final confirmation of shareholding will be added and no other checking of shareholders position will be needed. A bar code might help to identify existing profiles for handmade reconciliations but most of these positions checking should disappear to be replaced by a 99% digital process, able to double-check prior to the meeting and by automatic email enquiries any conflict of identities.

As far as intermediary votes are concerned, in contrast with the US, we consider that the beneficial owner is the holder of record and see no need for the intermediary to establish its own Internet Web site to post its request for voting instructions.

Very important : maximum comfort for the voting shareholder should be insured on the voting site and therefore issuers should certainly not adopt some means to prevent persons other than holders of record from being able to print or download the proxy card from its Web site. The final confirmation of positions will simply kill invalid votes as any purchase over the web is killed for unauthorized credit card positions...

V/ EDGAR

The issuer should be able to make its proxy materials electronically available on a central electronic vote pages but made accessible through the issuer site and through many third parties web sites (banks brokers, proxy agencies).

The issuer should provide EDGAR with proof copies of the original documents including the annual report. The SEC should also best require issuers following the proposed model to post all of their proxy materials on the Internet Web site so that those materials would be readily accessible in one place. The alternative model should specifically prohibit pre-registration by shareholders at the Web site before they are granted access to the proxy materials and allow the issuer's use of third-party Web sites to host the issuer's proxy materials.

VI/ Period of Reliance

Neither the shareholder nor the issuer be bound by the shareholder's initial decision as to whether or not to request a copy of the proxy materials in subsequent proxy seasons.

The adjournment of a shareholder meeting should require the issuer to deliver a second Notice of Internet Availability of Proxy Materials at least 30 days before the adjourned meeting date but post or by e-mail at the address remitted following the delivery of first notice.

An issuer should not be required to deliver an additional Notice of Internet Availability of Proxy Materials to shareholders whenever state law requires the delivery of a shareholder meeting notice.

VI/ Role of Intermediaries

Distributing proxy materials to beneficial owners is as stated considerably more complicated and expensive than direct delivery of the materials by an issuer to its record holders.

We suggest that proxy rules contain three rules, Exchange Act Rule 14a-13, Rule 14b-1 and Rule 14b-2, requiring issuers to send their proxy materials to intermediaries for forwarding to the beneficial owners.

(Exchange Act Rule 14b-1 sets forth the obligations of registered brokers and dealers , Rule 14b-2 on obligations of banks, associations, and other entities that exercise fiduciary powers) should be amended and replaced by their obligation to confirm for free of charges upon any investors request his identity (name, surname) address, the custody intermediary chain of custodians (between this intermediary and the investor) and, least but not last, the number of shares held .

Because voting was useless and unpractical in the passed years the voting process, in Europe as in the US has until recently relied only on the issuer trying to contact the investors through the chain of intermediaries.

A side-product was to use this process to identify the shareholders, opposite to the confidentiality rule and to normal agency direction. The existence of Internet, the willingness of shareholders to participate, the strong interest for dialogue between companies and investors allows to go back to the normal direction of the agency process.

We therefore respectfully disagree with an amendment idea that sticks to the old process : the proposed amendments would revise Rules 14b-1 and 14b-2 to require brokers, banks, and similar intermediaries, at the request of an issuer, to furnish proxy materials, including the Notice, to beneficial owners of the issuer's securities: while this should be allowed it should not be made compulsory. However in order to insure a clear and active cooperation of intermediaries an obligation to contribute to the identification of the beneficial end shareowner and of the custody links that will justify its identity and share ownership would be useful for the future of internet driven voting and corporate actions.

PROXINVEST FINAL COMMENTS

We understand here that the sending of the notice still relies upon the current US shareholder identification process (ADP survey type).

As you possibly know France has operated quite successfully since the eighties under a "dematerialization of securities" with local clearing banks acting as final confirming agent for the shareholding of unknown investors (through a soon disappearing blocking operation to be replaced by a simple "confirmation of shareholding" operation). We consider this system to be by far superior for the integrity of the shareholders identification.

Great additional benefits for all parties of the D-3 recording starting in 2006 are to be expected in addition to the immense plus of the perfect match between AGM real shareholders and voting shareholders.

Differing from the currently most common identification processes, the recording of the voting shareholder's positions can take place days AFTER the voting ; under such mode Internet process the vote is passed on the issuer's voting site and the site will attempt to validate the vote it a posteriori with the appropriate secured self-generated codes passed by the chain of intermediaries. (A unique code is generated at the time of the vote, attached to the vote or proxy card, then and passed to the chain of intermediaries with a request for confirmation of the shares held. The final link of the custody chain, the stock-clearing bank with CREST or EUROCLEAR, passes this code to the registrar that reconciles automatically matching codes and thereby validates the votes and corresponding share numbers.)

The voting instruction (the content of the proxy card) will therefore no longer pass through custodians as they do usually by paper forms voting, but only the identification data - name, number of shares held and voted, secret identification code to be matched with the vote instruction received .

The issuer through the central voting site managed by its registrar or AGM agent will be informed days in advance of the intents to vote, even from any unknown remote holder. He will also be able to contact him by Internet or else, as the Voting site will likely have demanded the e-mail address of the voting willing holder (if only to acknowledge receipt of voting instructions, confirm the recording of the identification on D-3 and send vote results in D+3...). Such shareholders profiles and emails address lists will be the basis for future IR activities and for the following next year AGM call.

Under this system any unknown investor having shares in a company and receiving notification by press info, web sites, e-brokers, custodians... of the forth-coming meeting will be able to access the open public AGM central voting pages through the web, and feed-in :

1/ its profile at the first time if not yet existing (there will not be that many AGM service providers so an individual or institutional investor will have easily its profile filed with these operators)

2/ its complete vote instructions.

Upon confirmation of its voting instruction over the central site, the site will in his name just request his designated custodian by email to confirm its holding to the registrar through the secured chain of custodians for latest D-3 (it will no longer necessarily be here an omnibus process although banks might like to treat it further the "omnibus way").

The receiving clearing bankers will exchange these identification messages and pass them to the registrar of the meeting managing the central voting site : by D-3 only the validated voting instructions will be cast for the AGM and remitted to the chair of the meeting.

Last but not least, investor will be able to change their vote orientations between say D-30 and D-3, another important comfort benefit.

As you know, we at Proxinvest as proxy analyst we do not intend to be part in this process business as this is a service to be paid mostly by issuers and a fiduciary type of responsibility rather appropriate for big clearing bankers and computer service providers such as ADP. A proxy advice is only peripheral to the early vote decisions but do not participate in the identification confirmation process.

But we see in the spreading of vote and corporate actions by internet the obvious interests of all of the players : integrity of the meeting, comfort for the investor and for the companies, speed, security while the existing paper process disappearing over time would still usable for the non-internet shareholders.