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Monday, February 06, 2006

Ms. Nancy Morris
Secretary
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
100 F Street, NW
Washington, D.C. 20549-9303

RE: File No. S7-10-05

Dear Ms. Morris:

We understand that the U.S. Securities and Exchange Commission (the Commission) "proposing amendments to the proxy rules under the Securities Exchange Act of 1934 that would provide an alternative method for issuers and other 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."

We are writing to provide general comments on the proposed amendments. Our comments are structured in two parts. Our initial comments focus on the proposal in general. In Appendix A, submitted below, we respond to the Commission's specific questions.

While we support the Commission's efforts to modernize capital access and believe the proposed amendments are a proper first step, it is also our belief that capital market practices, in general, are deeply flawed. It is our hope that the Commission will begin to review market practices from a systemic, global perspective, since defective practices in one sector have been shown to be linked to faulty practices in other capital market sectors:

- In multiple cases, corporate management used fraud and deceptive practices to unfairly transferred value from outsider to insider shareholders.

- Investment analysts issue biased research reports to curry favor with management.
- Rating agencies issue defective research reports. These institutions are supposed to "base their ratings largely on statistical calculations of a borrower's likelihood of default," but one news report noted that:

"Dozens of current and former rating officials, financial advisers and Wall Street traders and investors interviewed by The Washington Post say the (NRSRO) rating system has proved vulnerable to subjective judgment, manipulation and pressure from borrowers. They say the big three are so dominant they can keep their rating processes secret, force clients to pay higher fees and fend off complaints about their mistakes."¹

- Pension consultants are, also, conflicted and compromised. "Many pension plans rely heavily on the expertise and guidance of pension consultants in helping them to manage pension plan assets," but, according to a Commission report²,

"Concerns exist that pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or an affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the clients' needs."

Together these practices threaten the integrity of securities markets. Individuals and market institutions with the power to safeguard the system, including investment analysts and rating agencies, have been compromised. Few efficient, effective and just safeguards are in place. Statistical models created by the firm show the probability of system-wide market failure has increased markedly over the past eight years.

Investors and the public are at risk.

¹ "Borrowers Find System Open to Conflicts, Manipulation" by Alec Klein, The Washington Post, Monday, November 22, 2004; Page A1.

² *Staff Report Concerning Examinations of Select Pension Consultants*. The Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission. May 16, 2005.

Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc. The firm researches and creates socially responsible investments and provides socially responsible investment advisory services.

Mr. Cunningham's understanding of capital markets is based on first hand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm. Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, his firm launched one of the first investment advisor websites.

The firm and Mr. Cunningham have long been concerned with the integrity of the securities markets. We note the following:

- On Monday, April 11, 2005, Mr. Cunningham spoke on behalf of investors at a fairness hearing regarding the \$1.4 billion dollar Global Research Analyst Settlement. The hearing was held in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. No other investment advisor testified or provided comments at the hearing, despite the fact that the hearing was open to the public and that a significant percentage of individual and mutual fund investors were impacted by the settlement.

Summary Comments

The Commission is

"proposing amendments to the proxy rules under the Securities Exchange Act of 1934 that would provide an alternative method for issuers and other 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.

Copies would be available to shareholders on request, at no cost. The proposed amendments are intended to put into place processes that would provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. Issuers that rely on the proposed amendments would be able to lower costs of proxy solicitations that ultimately are borne by shareholders. The proposed amendments also would apply to a soliciting person other than the issuer, which we anticipate might reduce the costs of engaging in a proxy contest. (The) proposals would not apply to business combination transactions. These proposals also would not affect the availability of any existing method of furnishing proxy materials."

We appreciate this effort, but note the following:

Repeatedly over the past twenty five years, signal market participants abandoned ethical principles in the pursuit of material well being.³ By 2005, marketplace ethics reached a new low. The following are the simple facts:

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg,

³ We refer to the following, abbreviated list of market related ethical lapses:

- The National Association of Security Dealers was found by the U.S. Securities and Exchange Commission to be "failing to police wrongdoing the NASDAQ Stock market, the second largest stock market in the world." The Washington Post (August 8, 1996. Page A1.)
- The failure of Long-Term Capital, an investment partnership started in 1994, was "laid on the kind of capitalism .. where a closed, secretive and incestuous elite held absolute sway over politics, the economy and finance, where banks lent to cronies and crooks, and the state miraculously came to the rescue when the time came to balance (or cook) the books." From "LTCM, a Hedge Fund Above Suspicion," by Ibrahim Warde, *Le Monde Diplomatique*, November 1998.

and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of \$1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.

- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about \$2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."
- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."
- On September 4, 2003, a major investment bank, Goldman Sachs, admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over \$9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined \$110 million dollars, for a total of \$119.3 million dollars in fines in six months.
- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay \$250

million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."

- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay \$215 million in disgorgement and \$110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, \$20 million in disgorgement and an aggregate \$30 million in civil penalties."
- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a \$37 million penalty and is to be enjoined from future violations of the federal securities laws."
- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay \$80 million – \$60 million in disgorgement and \$20 million in civil penalties."
- On November 30, 2004, the Securities and Exchange Commission announced "the filing..of charges against American International Group, Inc. (AIG) arising out of AIG's offer and sale of an earnings management product." The company "agreed to pay a total of \$126

million, consisting of a penalty of \$80 million, and disgorgement and prejudgment interest of \$46 million."

- On December 22, 2004, "the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri." According to the announcement, "Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers." The company agreed to "pay \$75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers."
- On January 25, 2005, "the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000."
- According to the Associated Press, on January 31, 2005, "the nation's largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay \$850 million to policyholders hurt by corporate practices that included "bid rigging, price fixing and the use of hidden incentive fees." The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, "the company will publicly promise to adopt reforms."
- On Feb. 9, 2005, the Securities and Exchange Commission "announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay \$140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two

additional former Columbia senior executives in federal court in Boston."

- On March 23, 2005, the Securities and Exchange Commission "announced that Putnam Investment Management, LLC (Putnam) will pay \$40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for increased visibility within the broker-dealers' distribution systems."
- On March 23, 2005, the Securities and Exchange Commission (Commission) "announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares."
- On April 19, 2005, the Securities and Exchange Commission "announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000." As part of the settlement, KPMG paid a fine totaling \$22.475 million.

Envy, hatred, and greed continue to flourish in certain capital market institutions, propelling ethical standards of behavior downward. Without meaningful reform there is a small, but significant and growing, risk that our economic system will simply cease functioning.⁴

Fully identifiable entities engaged in illegal activities. They have, for the most part, evaded prosecution of any consequence. We note that the aforementioned Goldman Sachs, fined \$159.3 million by the Commission for various efforts to defraud investors, subsequently received \$75 million in Federal Government tax credits.⁵

⁴Proportional hazard models created by the firm and reflecting the probability of system wide market failure first spiked in September, 1998. The models spiked again in August, 2001. They have continued, in general, to increase.

⁵ The tax credits were awarded under the U.S. Department of the Treasury New Markets Tax Credit (NMTC) Program. (See: <http://www.cdfifund.gov/programs/nmtc/>).

We also note that the aforementioned Alliance Capital Management, fined \$250 million by the Commission for defrauding mutual fund investors, received a contract⁶ in August, 2004 from the U.S Department of the Interior (DOI) Office of Special Trustee for American Indians, to manage \$404 million in Federal Government trust funds.⁷

Recently, we have observed several cases where corporate management unfairly transferred value from outsider to insider shareholders.⁸ These abuses have been linked to the abandonment of ethical principles noted earlier. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies.

We understand that, given any proposed rule, crimes will continue to be committed.⁹ These facts lead some to suggest that regulatory authorities may have been "captured" by the entities they regulate.¹⁰ We note that

⁶ Contract number NBCTC040039.

⁷ The contract was awarded despite the fact that placing Alliance Capital Management in a position of trust is, given the Commission's enforcement action, inconsistent with common sense, with the interests of justice and efficiency and with the interests of Indian beneficiaries. Alliance is also in violation of DOI Contractor Personnel Security & Suitability Requirements.

⁸ Including, but not limited to, Adelphia Communications, the aforementioned Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America's Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

⁹ We assume that "employees are 'rational cheaters,' who anticipate the consequences of their actions and (engage in illegal behavior) when the marginal benefits exceed costs." See Nagin, Daniel, James Rebitzer, Seth Sanders and Lowell Taylor, "Monitoring, Motivation, and Management: The Determinants of Opportunistic Behavior in a Field Experiment, *The American Economic Review*, vol. 92 (September, 2002), pp 850-873.

¹⁰ See George J. Stigler, "The Theory of Economic Regulation," in *The Bell Journal of Economics and Management Science*, vol. II (Spring 1971), pp. 3-21.

under the "regulatory capture" market structure regime, the public interest is not protected.

We cite the following:

"Falsification and fraud are highly destructive to free-market capitalism and, more broadly, to the underpinnings of our society. Above all, we must bear in mind that the critical issue should be how to strengthen the legal base of free market capitalism: the property rights of shareholders and other owners of capital. Fraud and deception are thefts of property. In my judgment, more generally, unless the laws governing how markets and corporations function are perceived as fair, our economic system cannot achieve its full potential. "

Testimony of Mr. Alan Greenspan, Chairman of the Federal Reserve Board, Federal Reserve Board's semiannual monetary policy report to the Congress. Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate. July 16, 2002.

We agree.

We favor efforts to increase fairness in our capital markets while opposing reform for reform's sake.

We support the Commission's efforts to modernize capital access and believe the "amendments to the proxy rules under the Securities Exchange Act of 1934 that would provide an alternative method for issuers and other 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" are a proper first step. We detail our reasons below.

Prior to the creation and adoption of high speed, massively networked public computer systems, providing an "alternative method for issuers and other persons to furnish proxy materials to shareholders" was a costly proposition, unfair to public companies and corporate management. This is, however, no longer the case. Many shareholders currently use websites like www.proxyvote.com to vote proxies.

Internet technology was specifically designed for this type of problem.

We are, however, concerned that the proposed amendments do not go far enough. The suggested rule changes are incremental modifications in an

environment where more significant action is required. We note such action can be constructive, especially in light of market malfeasance cited above.

For example, we believe public companies should be *required* to conduct Board elections on-line, via the Internet. Candidates could be nominated by shareholders on-line and a fair, efficient candidate screening procedure could be established.

Elections could be conducted using a secure, tamper resistant, management-independent website. Votes would be tabulated in real time. The proposed Board member nomination and vote tabulation system could be tied to a shareholder accounting system to determine the number of shares held by the person or group nominating a candidate. Once nominated, information on the candidate and the shareholders or groups of shareholders nominating a person could be easily incorporated into the on-line proxy materials that are the subject of the proposed amendments.

Further, we suggest using a fairness-enhanced, Dutch-auction style system to allocate and price initial public offering (IPO).¹¹ The network of prescreened buyers, already well known to Wall Street, could easily be moved to this system. The system would be designed to meet certain security and performance standards.

An Internet based, on-line system, allowing for the dissemination of corporate governance data, pricing information and securities, will significantly lower the cost of raising capital.¹² We believe this lowered cost will result in more companies coming to market. More companies coming to market will result in, other things equal, higher levels of economic activity, lower unemployment and lower inflation.

We also believe such a system will be fairer. Currently, members of the public pay, unfairly, for the privilege of purchasing IPO shares: they can only

¹¹ We have developed a fairness-enhanced Dutch-auction style system to allocate and price securities, our Fully Adjusted Return™ Auction System. The system is proprietary and a trade secret. As such, it is beyond the scope of this comment.

¹² On average, investment banks appropriate seven percent (7%) of the capital raised via traditional Initial Public Offerings. We estimate the cost will, over six years, fall from 7% to 1%.

purchase shares at an excessively high price in the after issuance market. We believe a non-proprietary, SEC-owned and managed IPO Dutch auction system will eliminate the short term run up observed in the after issuance IPO market.¹³

We suggest this system be phased in over a six year period. In the first two years, IPO issuers would simply be offered the option of issuing securities via on-line Dutch auction. After two years, companies seeking capital in the IPO market would be required to describe why they chose to use or not to use the system. They would have to report certain information to shareholders. As noted, we expect a Dutch auction system to be cheaper (resulting in lower stock issuance cost) than the current non-auction system. Corporate management would be required to report the cost differential between the Dutch auction system and other methods. Over time, say, after six years, all IPO's would be issued through the on-line Dutch auction system.¹⁴

In summary, we believe the use of on-line, Internet-based and enhanced capital access tools will significantly reduce costs and increase the flow of capital to all sectors in society. This increase in capital access will, in turn, result in significantly increased general economic activity. We estimate, using proprietary economic models, this increased economic activity at \$5 trillion dollars over ten years. (This assumes an internet based capital access system that is gender and racially neutral, operating without significant falsification and fraud.)

The internet is a powerful tool. We understand both the potential benefits and the potentially disruptive nature of this technology better than most.¹⁵

¹³ This run-up was, according to one source, 16 percent (for IPO stocks issued between 1960 and 1987).

¹⁴ If Ebay can successfully implement this technology, so can Wall Street.

¹⁵ We appreciate the nature of the task facing regulators. Implementing the proposed modification is very much like performing surgery on a marathon runner - during a race. Corporate fraud and malfeasance threaten the entire system, just as cholesterol clogged arteries threatens the health of the aforementioned runner. To make matters worse, (and to extend this analogy far too long) the nature of the technology is such that it significantly improves the performance of every runner in the race.

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Capital market regulators in other regions of the world will, at some point, enhance their ability to access capital using internet-based tools. Thus, competitive advantage with respect to capital access is available to any country with significant economic potential and a modest communications infrastructure.

We do not know which countries will be winners over the long term. We know with certainty, however, that without the full set of internet-based and enhanced capital access tools outlined above and given the corporate fraud and malfeasance cited, it is unlikely that the United States will long maintain and enjoy its current advantage. The modifications proposed by the Commission are an important first step.

We look forward to reviewing the Commission's continuing efforts to carry out its mission. We appreciate the time and effort the Commission has devoted to this task. Thank you for your leadership.

Please contact me with any questions or comments.

Sincerely,

William Michael Cunningham
Social Investment Adviser
for William Michael Cunningham and Creative Investment Research, Inc.

Appendix A

Has Internet access become sufficiently widespread to make a “notice and access” model for furnishing proxy materials a viable model?

Yes. Internet access is standard and access will increase. (On November 16, 1995, Mr. Cunningham launched one of the first investment advisor website at www.ari.net/cirm. He has more experience monitoring and using the internet than most investment advisors.)

Is the means by which most shareholders access the Internet sufficient to access lengthy documents such as annual reports, proxy statements, and information statements? Would investors be excessively burdened by having to download and print these documents?

Yes. We expect portable documents formats to become more efficient, leading to smaller download file sizes. Further, we expect that funding to portable document format research and development will increase if the Amendments are adopted. This increased R&D will lead to more efficient, more robust portable document format methodologies.

As technology has progressed, so has the amount of content that can be transmitted electronically. Many Internet Web sites currently use advanced formatting that may not be compatible with, or may substantially slow, dial-up connections. Do shareholders need broadband technology to efficiently download lengthy documents such as annual reports, proxy statements, and information statements?

Broadband helps, but shareholders do not need broadband technology to efficiently download lengthy documents. See our comments above.

If so, do shareholders have sufficient access to broadband technology to make the proposal described in this release feasible?

See our comments above.

As part of the “notice and access” model, should we require issuers and other soliciting persons to make their proxy materials available in a format that can be readily downloaded by shareholders over dial-up connections?

We do not believe the Commission should require issuers and other soliciting persons to make their proxy materials available in a format that can be readily downloaded by shareholders over dial-up connections. We believe developments in the portable document field will lead to the creation of new formats that will allow shareholders to download large documents over dial-up connections.

Should we require issuers and other soliciting persons to provide, where available, links to third-party Web sites from which shareholders would be able to download, free of charge, any software necessary to view the documents?

Yes.

Do issuers have sufficient bandwidth on their Internet Web sites to handle any anticipated increased traffic?

Yes.

What actions would issuers have to take to ensure that their Internet Web sites have sufficient capacity to handle the increased traffic?

Issuers may have to add server capacity or contract for added bandwidth. The required modifications are trivial. The cost of adding additional servers to meet demand is far lower than the cost of disseminating paper documents.

Should the proposed model instead be based on obtaining a shareholder’s consent?

Yes.

If so, what type of consent should be required (e.g., should a shareholder's affirmative consent, implied consent, or other type of consent be required?)

Affirmative consent.

Should any disclosure be required in connection with the request for consent?

No.

If so, what disclosure should be required?

None.

Should the "notice and access" model be available with respect to all shareholders of all issuers, or should there be limitations on its use?

We believe the model should be limited in its initial application. As the Commission gains experience with the model, the scope and scale of the model should be broadened to include all shareholders of all issuers. The model does have the potential to be disruptive. Certain groups, including labor and related narrowly focused interests, corporate raiders, mutual funds, hedge funds, pension funds, investment banks and others may seek to use these new rules unfairly, to create new harassment and takeover techniques.¹⁶

In addition, should shareholders discover that these new rules have been used as a takeover device we suggest the Commission put into place a series of strict monetary and criminal penalties. This set of penalties would include forfeiture of board membership and corporate control.

Should the availability of the "notice and access" model depend on the nature of the issuer? For example, should the "notice and

¹⁶ Given their critical role in the capital formation process, we suggest that, if an investment bank or mutual fund is found to have used these new rules unfairly or unethically, their SEC registration be lifted immediately. This is a "death penalty" for the misuse of these new rules.

access" model be available for all issuers or should its availability depend on the issuer's Securities Act registration statement form eligibility (e.g., Form S-3 eligibility) or the issuer's Exchange Act reporting history (e.g., only those issuers that are current in their Exchange Act reporting)?

The "notice and access" model should be available for all issuers.

Should the availability of the "notice and access" model depend on the nature of the issuer's investors? For example, should the "notice and access" model be equally available with respect to all shareholders (e.g., institutional versus individual shareholders, more financially sophisticated shareholders versus less financially sophisticated shareholders)?

The "notice and access" model should be equally available for all issuers. We believe that institutional investors will use the model first.

Should mutual funds, closed-end funds, business development companies, and other investment companies be permitted to use the "notice and access" model?

Yes.

In addressing each of the questions above, commenters are asked to address differences in the degree to which different categories of investors in particular types of issuers have access to, and are prepared to use, the Internet in receiving communications from the issuer.

No answer.

Is it appropriate to provide issuers with the alternative of using the "notice and access" model to furnish annual reports and proxy statements or information statements, as proposed?

Yes.

Should we modify the proposed “notice and access” model in any way?

No. We think it is fine.

If so, how?

N/A

The proposed requirement that an issuer choosing to rely on the “notice and access” model would have to send the Notice of Internet Availability of Proxy Materials to shareholders 30 days or more in advance of the shareholder meeting date is designed to provide sufficient time for a shareholder to request a copy of the proxy materials, if desired, and to review the materials prior to voting. Would the proposed 30-day period achieve this objective?

No.

Would a shorter or longer period be more appropriate?

Longer.

If so, please specify the length of the period that would be more appropriate and explain why.

To account for internet access delays and possible mail disruptions.

Are the proposed means by which a shareholder can request a copy of the proxy materials appropriate?

Yes.

Should the issuer’s provision of an e-mail address from which shareholders can request copies be optional?

Yes.

Should the rules expressly reference other appropriate means by which shareholders can request a copy of the proxy materials?

Yes.

Should the rules specifically require that the issuer provide shareholders with a postagepaid, pre-addressed reply card to request a copy of the materials?

No.

Should we permit issuers to household the Notice of Internet Availability of Proxy Materials, as proposed?

Yes.

If not, why not?

N/A

Should we require or permit additional information in the Notice of Internet Availability of Proxy Materials? For example, if the issuer is aware that a proxy contest is being effected, should it be required to indicate in the Notice that such a contest exists?

Yes.

Also, if the issuer recommends a vote in opposition to a shareholder proposal, should it be required to state that the proxy statement contains the shareholder's statement in support of the proposal?

Yes.

Should we permit the Notice to include a request for the shareholder's affirmative consent to future electronic delivery of the Notice?

Yes.

We have proposed that the Notice contain “a clear and impartial identification” of matters to be acted upon. This language mirrors language currently found in Rule 14a-4 related to the proxy card to indicate that such identification should be as brief as it currently is on proxy cards. We also propose that a soliciting party may not include a supporting statement. We have included these proposals because we do not intend the Notice to become a means of persuading shareholders how to vote. Should the rules be more specific regarding the brief and factual nature that we intend for the identification of matters to be acted upon?

No.

Is the language of the proposed legend appropriate?

Yes.

If not, what should be changed and why?

N/A

Should we permit materials in addition to the proxy card and a return envelope to accompany the Notice of Internet Availability of Proxy Materials?

Yes.

If so, what types of materials should we permit? For investment companies, should we permit a copy of the company’s current prospectus or profile to accompany the proxy card and Notice?

Yes.

Should we require issuers to apply plain English principles to the Notice of Internet Availability of Proxy Materials, as proposed?

Yes.

If so, should we apply requirements similar to those in Rule 421(d) or Rule 421(b)51 under the Securities Act?

Yes.

Should we establish different plain English standards for the Notice?

No.

If so, what?

N/A

Is it unnecessary to apply plain English principles to the Notice, given the brevity of the Notice and factual nature of the information to be included in the Notice?

No. See above.

Is it appropriate to impose a separate obligation on the issuer under Section 14(a) to provide a copy of the proxy materials to requesting shareholders?

Yes.

If not, are there other options that we should consider to ensure that copies are available to shareholders that desire them?

N/A

Should an issuer or other soliciting person be permitted to charge a requesting shareholder for a paper copy of the proxy materials?

No.

Should we require the Notice to be filed with the Commission under Rule 14a-6(b), as proposed?

Yes.

Should we create a new EDGAR form type for filing the Notice?

No.

Should a special EDGAR form type be created for a Notice regarding the availability of a Schedule 14C information statement?

Yes.

Would it cause confusion if such a Notice is filed under a Regulation 14A rule?

Yes.

As noted above, the proposed rules would require a second Notice if revised proxy materials are required to be furnished to shareholders and the issuer wishes to rely on the proposed model to do so. Are there other situations in which an issuer should be required to furnish a second Notice?

Yes. Extraordinary corporate and delivery circumstances.

Should the rules, as proposed, 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, subject to the proposed limitations?

Yes.

If not, why not?

N/A

Would it be more appropriate to require that the proxy card always be furnished together with and through the same delivery means as the Schedule 14A proxy statement and the annual report to shareholders?

No.

Conversely, should we require that the proxy card always accompany the Notice, regardless of the manner in which the proxy statement and/or the annual report to shareholders was furnished?

No. We believe management should be given maximum flexibility to use the new delivery medium in the most appropriate manner given the specific circumstances at hand.

Exchange Act Rule 14a-6 requires the preliminary filing of the proxy statement and the proxy card.⁵⁴ That rule provides an exclusion from the preliminary filing requirement for so-called “plain vanilla” proxy materials that relate to a meeting of security holders at which only a specified list of common matters are to be considered.⁵⁵ Those proxy materials may be filed in definitive form only. Would it be more appropriate to require that the proxy card be furnished together with and by the same means as the proxy statement and the annual report to shareholders, regardless of the means by which the Notice of Internet Availability of Proxy Materials is furnished, unless Rule 14a-6 would permit the proxy materials to be filed in definitive form only, or unless the meeting addresses only those matters listed in Rule 14a-6, notwithstanding the exclusion in that rule regarding solicitations in opposition?

No. We believe management should be given maximum flexibility to use the new delivery medium in the most appropriate manner given the specific circumstances at hand.

In either of those situations, would it be appropriate to permit or require the Notice of Internet Availability of Proxy Materials and the proxy card to be furnished together and by the same means even if the proxy materials and/or the annual report to shareholders were furnished separately and/or through a different means (for example, the Notice of Internet Availability of Proxy Materials and proxy card furnished together in paper and the proxy statement and/or the annual report to shareholders posted on an Internet Web site)?

Yes.

Would a shareholder be more or less likely to access and review the proxy statement and annual report before voting if these documents were posted electronically on the Internet Web site, but the proxy card was delivered to shareholders in paper with the Notice?

We believe a shareholder would be less likely to access and review the proxy statement and annual report before voting if these documents were posted electronically on the Internet Web site, but the proxy card was delivered to shareholders in paper with the Notice. We believe you must provide building materials at the same time that you provide tools for building.

Would the proposed model increase issuers' dependency on discretionary broker voting?

No.

Would it increase the amount of discretionary voting?

No. We believe it would decrease the amount of discretionary voting.

Are there 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)?

Yes.

What might be the consequences of such uncertainty?

This might be very disruptive. Given management's abhorrence for uncertainty, we believe policies and procedures would be developed to minimize this uncertainty that might result. It will be the responsibility of the Commission to insure these policies and procedures are fair.

Should there be increased or more prominent disclosure regarding how those discretionary broker votes operate?

Yes.

If so, what added disclosure should be required?

Information on the process, who benefits from the practice, and the potential impact of the practice on corporate governance.

Where should such disclosure appear (e.g., on the Notice)?

On the notice.

Much shareholder voting currently is tabulated through the use of machine readers to identify and verify a shareholder's position. If an issuer posts its proxy card on the Internet Web site along with other proxy materials and permits shareholders to print out the proxy card and return it to the tabulator, should we adopt rules that would require the printout to include bar codes or other identification conducive to the automated processing of votes?

No. See www.proxyvote.com to determine current practices.

Do we need to provide for the ability to include such codes on the Notice?

Yes.

If an issuer chooses to post its proxy card on an Internet Web site, what, if any, technological difficulties would this present for voting the proxies?

We believe an issuer that chooses to post its proxy card on an Internet Web site will face fewer technological difficulties.

In this regard, please discuss the technology that is available, or may be developed, for posting proxy cards and voting through Internet Web sites. Are additional rule changes necessary to facilitate the use of this technology?

We suggest the Commission review the full set of internet survey technology. We suggest the Commission start with www.surveymonkey.com.

If an issuer chooses not to send a proxy card with its Notice, should an intermediary be allowed to decide whether to send out a request for voting instructions with the Notice?

Yes, depending upon the circumstances.

A beneficial owner cannot, in most cases, execute a valid proxy because a beneficial owner is not the holder of record under state law. Instead, a beneficial owner typically submits voting instructions to its intermediary. If an issuer chose to post its proxy card on a Web site with other proxy materials, should the rules require the intermediary to establish its own Internet Web site to post its request for voting instructions?

No.

Should the proxy materials be placed on that Internet Web site as well?

Yes, with a link to the issuers website.

Should the intermediary be required to create its own Notice, or use some other means, to clarify to beneficial owners that they cannot execute the proxy available on the issuer's Web site?

No.

Should issuers 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?

Yes. Again, we suggest the Commission review the full set of internet survey technology. We suggest the Commission start with www.surveymonkey.com.

If an intermediary creates its own Notice and directs beneficial owners to its own Internet Web site to obtain proxy materials and the request for voting instructions, should the proxy rules be amended to provide that an issuer would not be required to send copies of its Notice to the intermediaries pursuant to Rule 14a-13?

We believe an intermediary should not create its own Notice. A simple link to the issuers notice should suffice.

When and how should the intermediary notify the issuer that it will create its own Notice?

We believe an intermediary should not create its own Notice. A simple link to the issuers notice should suffice.

Should the issuer be able to make its proxy materials electronically available only on the EDGAR Web site?

Yes. This would be one way to insure data integrity and certain access.

If so, how would it make the glossy annual report electronically available to shareholders?

Adobe .pdf format. Again, we believe new technologies will be developed to make this easier and more efficient.

Should we 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?

Yes.

Should we require companies to electronically post on the Web site any soliciting materials that are disseminated prior to furnishing a proxy statement pursuant to Rule 14a-12?

Yes.

Should the rules, as proposed, require proxy materials posted on an Internet Web site to be presented in a format that is substantially identical in appearance to the format used in paper copies of the materials?

No. The proxy materials posted on an Internet Web site should be presented in a format that takes full advantage of the technology.

Are there any advantages to requiring or permitting the proxy materials to be posted electronically in HTML or ASCII format (e.g., would this lessen concerns about the ability of shareholders to easily download the materials or speed the downloading process)?

Yes. One potential advantage would be the ability to reference material that is of direct interest to shareholders, text, video, and other to be discovered formats.

Should issuers have to post their proxy materials in both PDF and HTML formats?

Yes.

Should there be additional specified requirements regarding the Internet Web site posting of information?

Yes.

For example, should the alternative model specifically prohibit or require: pre-registration by shareholders at the Web site before they are granted access to the proxy materials; the issuer's use of third-party Web sites to host the issuer's proxy materials; or the issuer's use of disclaimers of liability or responsibility for the information?

We believe these rules regarding these requirements are best left up to the issuer. Every situation will have unique aspects.

Should we require annual reports to security holders to be filed, or furnished, on EDGAR?

Yes.

Should a shareholder and/or 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?

No. Shareholders should be queried each time.

If so, should the issuer be subject to the 30-day notice period regarding delivery of the Notice of Internet Availability of Proxy Materials in subsequent proxy seasons only with respect to shareholders who made an initial decision to request a copy of the proxy materials (with the result that the issuer could, for example, deliver the Notice to other shareholders 25 days rather than 30 days before the new meeting date)?

N/A

Should an adjournment of a shareholder meeting require the issuer to deliver a second Notice of Internet Availability of Proxy Materials?

No.

If so, should the issuer have to deliver that Notice to shareholders at least 30 days before the adjourned meeting date?

N/A

Should an issuer 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?

No. One notice should suffice.

Would the proposed rules create any problems or conflicts with state law?

Yes.

If so, how should those problems be resolved?

Via legal challenge.

Under current rules, issuers are required to file with the Commission additional soliciting materials used after furnishing the proxy statement, but issuers are not required to otherwise furnish them to shareholders. We propose that, under the alternative model, these additional materials be filed with us and posted on the specified Internet Web site. Given an issuer's general interest in seeing that such materials are publicized, would such proposed steps be sufficient, or would it also be appropriate to require a public notice of additional soliciting materials, such as a press release?

The proposed steps should be sufficient.

As proposed, it would be the responsibility of a shareholder desiring a copy of the proxy materials to request one in sufficient time to receive the materials before the meeting. Is this appropriate?

As long as notice of availability is timely, yes.

Should the Notice of Internet Availability of Proxy Materials state a date by which a shareholder desiring a copy must request it a specified number of days in advance of the meeting date (e.g., a shareholder must request a copy no later than 10 or 15 days before the meeting date)?

Yes.

If so, how far in advance of the meeting date should the shareholder have to request a copy?

20 to 30 days.

Establishing a deadline by which shareholders must request copies might increase the likelihood that a shareholder will receive materials before the meeting, but also would reduce the amount of time that shareholders have to make the request. Which of these competing interests, if any, is more important?

Increasing the likelihood that a shareholder will receive materials before the meeting.

Alternatively, should the proposed rules mandate a minimum period of time after receipt of the Notice of Internet Availability of Proxy Materials during which a shareholder could request a copy of the proxy materials?

No.

If so, how long should this period be?

N/A

Should that period be 15 days, 10 days, or a shorter or longer period?

N/A

Should an issuer have to respond to a request for a copy of the proxy materials made after the annual meeting date, as proposed?

Yes.

If not, why not?

N/A

If so, should there be any limit on the period after the annual meeting date during which an issuer must respond to a request for a copy?

No.

Is the proposed two-business-day requirement an appropriate period of time for the issuer to respond to a shareholder's request for a copy of the proxy materials?

No.

Should the issuer be required to do so in one business day?

No.

Would the issuer need more time, such as three or four business days?

Yes.

If a longer period of time is provided, should the 30-day minimum period between the sending of the Notice and the meeting also be lengthened?

Yes.

If not, why not?

N/A

Is the proposed requirement that an issuer provide requested paper copies by first class mail or other reasonably prompt means appropriate?

Yes.

Should an issuer have to provide the requested paper copy by more expedited means, such as overnight or two-day delivery?

No.

Should an issuer have more time to respond to requests for copies if it sends the Notice more than 30 days prior to the meeting?

Yes.

Should the proposed rules provide a mechanism for a shareholder that requests a copy of the proxy materials to indicate that he or she wants to continue receiving a copy of the issuer's proxy materials for every subsequent meeting where the issuer relies on the "notice and access" model until the shareholder subsequently advises the issuer otherwise?

Yes.

For example, should the rules require an issuer and/or intermediary to develop a list of shareholders who always want their materials in paper?

Yes.

If so, why?

This will ease request processing burdens.

If not, why not?

N/A

How would such a system work?

Describing this system is beyond the scope of our comment.

At the time the proxy materials are being prepared and printed, the issuer is unlikely to have a reliable estimate regarding the number of

shareholders that will request copies of the proxy materials, particularly in the issuer's first year of reliance on the "notice and access" model. The issuer would have to maintain or prepare a sufficient supply of paper copies to satisfy all shareholder requests for paper copies. Thus, at least in the first year, when the issuer does not have previous experience with this model, it may have to print an excessive number of paper copies. Should we consider any procedures to mitigate this possibility?

Yes.

If so, what types of procedures would be appropriate?

The Commission will want to be careful to give maximum consideration and flexibility to issuers in the first year of operation. This may mean not fining companies who inadvertently miss important deadlines due to the newness of the procedures.

Should the proposed alternative model be limited to the furnishing of proxy materials by issuers to their record holders?

Yes.

Is it appropriate to allow the issuer to compel the intermediary to undertake the obligations that would be required under the proposed model?

Yes.

Are there practical problems with an issuer's reliance on the proposed "notice and access" model in connection with the furnishing of proxy materials and requests for voting instructions to beneficial owners?

Questions concerning liability in the case of errors or omissions will be brought up. We believe the judicial system is the appropriate venue to answer these questions.

Should intermediaries or their agents be allowed to use the “notice and access” model regardless of whether the issuer chooses to furnish documents to its record shareholders in reliance on the proposed model?

Yes, although this will be problematic for the issuer and the service provider.

If so, should the issuer have to supply copies of the proxy materials to intermediaries for forwarding to beneficial owners who request them?

Yes.

Should intermediaries be able to use e-mail addresses that they have obtained from their customers for electronic delivery of the Notice of Internet Availability of Proxy Materials even if their customers have not specifically consented to the electronic delivery of proxy materials?

Yes.

Is the proposed requirement that the issuer or soliciting party deliver a sufficient number of copies of its Notice of Internet Availability of Proxy Materials to intermediaries at least five business days prior to the proposed deadline for furnishing the Notice of Internet Availability of Proxy Materials appropriate?

Yes.

Would this proposed requirement present special difficulties for a soliciting person other than the issuer, given the differences in the timing requirements for delivery of the Notice if the soliciting person is reacting to the issuer’s solicitation?

Possibly.

Is it appropriate to require the issuer to send copies of the proxy materials to beneficial owners who request copies directly from the issuer?

Yes.

Should the intermediary be required to estimate the number of copies that it is likely to need to satisfy requests from its beneficial owner customers?

No.

If so, would the intermediary have a reasonable basis to make such an estimate?

N/A

Would the flow of copies from issuer to intermediary to beneficial owner be overly time-consuming?

N/A

Should intermediaries be allotted less time to forward e-mail copies of the proxy materials?

No.

The issuer might be able to trace the identity of anyone accessing the Web site on which the proxy materials are posted through the use of "cookies" or other technology. Should the rules require that the proxy materials to be accessed by beneficial owners be posted on a Web site that protects the confidentiality of an OBO's identity?

No.

If so, should this Web site be separate from the issuer's Web site?

N/A

Are there other ways to protect the identities of OBOs without placing an excessive burden on issuers or intermediaries?

Yes.

Should issuers be permitted to request proof of a person's status as a beneficial owner when they receive requests for copies of their proxy materials?

Yes, but such request should be made in a reasonable and unbiased manner, and not for purposes of blocking proposed changes in corporate control.

Should we require issuers to provide copies to all persons requesting copies?

Yes.

Keeping in mind that only shareholders would receive the Notice, is there a possibility that the issuer would be unduly burdened by excessive requests for copies?

We do not think so.

Is there a concern that beneficial owners may erroneously attempt to execute a proxy card if the issuer posts its proxy card on the same Internet Web site as the proxy statement?

Yes.

Should the rules separate the voting mechanisms for registered holders and beneficial owners to prevent confusion?

Yes. It is in everyone's best interest to minimize the potential for confusion and fraud.

Should we require intermediaries to establish their own Web sites to post proxy materials to help prevent any such confusion?

No.

Is it likely that intermediaries or third parties will develop Web sites to facilitate use of the “notice and access” model?

Yes.

Is it appropriate to permit intermediaries to charge the issuer for forwarding copies?

No.

If so, what would be an appropriate fee?

N/A

Should the beneficial owner desiring to maintain anonymity bear this cost?

N/A

Should the beneficial owner’s intermediary instead bear this cost?

N/A

Is it reasonable for intermediaries (or their agents) to continue to collect an incentive fee from issuers for each set of proxy materials that they deliver electronically rather than in paper if the Commission adopts the proposed “notice and access model”?

Yes.

Should the incentive fee be a one-time charge (assessed only the first time a paper copy is suppressed) or a recurring fee?

Should the self-regulatory organizations establish new fees that an intermediary may charge as reasonable for services rendered to an

issuer when the issuer relies on the proposed “notice and access” model, if adopted?

Yes.

If so, what type of fee schedule would be appropriate?

We do not know. We suggest the Commission review current fee structures in use on the internet.

Should soliciting persons other than the issuer be able to take advantage of the “notice and access” model?

Yes.

Why or why not?

Reasonable efforts to change corporate management will benefit from allowing soliciting persons other than the issuer to take advantage of the “notice and access” model. As we noted earlier, the model does have the potential to be disruptive. Certain groups, including labor and related narrowly focused interests, corporate raiders, mutual funds, hedge funds, pension funds, investment banks and others may seek to use these new rules unfairly, to create new harassment and takeover techniques.

In addition, should shareholders discover that these new rules have been used as a takeover device we suggest the Commission put into place a series of strict monetary and criminal penalties. This set of penalties would include forfeiture of board membership and corporate control.

Should the rules, as proposed, permit a soliciting person to furnish a proxy card and the Notice of Internet Availability of Proxy Materials to shareholders separately and through the use of different media, subject to the proposed limitations?

Yes.

If not, why not?

N/A

Would it be more appropriate to require that the proxy card always be furnished together with and through the same delivery means as the Schedule 14A proxy statement?

No.

Conversely, should we require that the proxy card always accompany the Notice, regardless of the manner in which the proxy statement was furnished?

No.

Please provide support for your position.

See our statement above. We believe new technologies and delivery mechanisms will render any such requirement ineffective.

Would it be more appropriate to require that the proxy card be furnished together with and by the same means as the proxy statement, regardless of the means by which the Notice of Internet Availability of Proxy Materials is furnished, unless Rule 14a-6 would permit the proxy materials to be filed in definitive form only, or unless the meeting addresses only those matters listed in Rule 14a-6, notwithstanding the exclusion in that rule regarding solicitations in opposition? In either of those situations, would it be appropriate to permit or require the Notice of Internet Availability of Proxy Materials and the proxy card to be furnished together and by the same means even if the proxy materials were furnished separately and/or through a different means (for example, the Notice of Internet Availability of Proxy Materials and proxy card furnished together in paper and the proxy statement posted on an Internet Web site)?

No.

Under the proposed model, how would a shareholder that is not solicited directly but goes to the soliciting person's Web site vote his or her shares?

We would hope that a shareholder database would be maintained on-site that could look up relevant information about the shareholder. The system would then verify the identity of the shareholder and allow them to vote. Votes would be held in a temporary buffer until the identity of the shareholder is confirmed.

Should the soliciting person be required, upon request from such shareholder, to provide the shareholder with a means for voting, for example, by providing the shareholder with a personal identification number or similar unique identifier and form to submit a proxy or voting instructions?

Yes.

Should we adopt rules addressing such voting systems to promote more accurate voting results?

No.

Under certain exchange rules, a broker is precluded from exercising its voting discretion for shares for which no voting instructions are received (commonly referred to as "broker non-votes") on several types of nonroutine matters listed in the rules. Matters that are the subject of a contest are considered non-routine. Staff at the exchanges determine whether a contest exists for purposes of the discretionary broker voting rule based on exchange rules and interpretations. For example, a NYSE interpretation suggests that a person other than the issuer must solicit at least 50% of the issuer's shareholders for a contest to exist under its discretionary broker voting rule. Should the widespread accessibility of a soliciting person's proxy statement and card affect current exchange interpretations?

Yes.

Should the proposed rules permit, as the current rules do, a soliciting person other than the issuer to limit its proxy solicitation to shareholders that are willing to access the proxy materials electronically, thus eliminating any need for the soliciting shareholder to send copies?

Yes.

Is this concept of a conditional proxy solicitation feasible?

With the right database and systems, yes.

Should such conditional solicitations be limited only to instances where the soliciting person posts the proxy card on an Internet Web site and does not send a copy of the proxy card with the Notice, to ensure that only shareholders who can access the proxy materials can vote?

No.

A proxy contest often involves a number of communications from both the issuer and the other soliciting person and time may be at a premium in such situations. Would the proposed model provide sufficient time for shareholders who desire copies to obtain materials from a soliciting person other than the issuer in the context of a proxy contest?

Yes.

Should a soliciting person other than the issuer conducting an electronic only solicitation be required to comply with a specified timeframe for sending its materials?

Yes.

If so, what should that timeframe be?

We do not know. Every situation will be different.

Should a soliciting person other than the issuer that is following the “notice and access” model, but not conducting an electronic-only solicitation, be required to provide the materials to solicited shareholders within the proposed timeframe?

Yes.

Would ten days after the issuer first sends its solicitation be sufficient time for a soliciting person other than the issuer to prepare its soliciting materials?

Yes.

Would a shorter period, such as five days or five business days, be sufficient?

No.

Are there other instances when the Notice of a soliciting person other than the issuer should differ from the issuer’s Notice?

Yes.

Should the rule require specific language that a soliciting person other than the issuer must insert in its Notice under these conditions?

Yes.

If so, what language would be appropriate?

A simple notice stating that the Notice is from a soliciting person other than the issuer and that it differs from the issuer’s Notice. And why.

If the soliciting person is not aware of the full agenda for the meeting when it sends its Notice, should it be required to disclose on

the Notice that the proxy card and Notice may not contain all matters to be acted upon?

Yes.

Should we require such a soliciting person to amend its proxy card to contain all items in the agenda?

No. There may not be time to do so, or, management may be limiting access to the agenda.

Is there another way to ensure that shareholders learn that executing a partial proxy card would invalidate their votes on other matters?

We suggest a website be created by the SEC that explains this in an easy to understand way.

If so, what additional requirements would be necessary?

See above.

Under the “notice and access” model, should the issuer be required to share affirmative consents to electronic delivery that the issuer already has obtained from its shareholders with persons conducting their own proxy solicitations?

Yes.

Under the “notice and access” model, should the issuer be required to share information with soliciting persons regarding shareholders who have requested copies?

Yes.

If the issuer chooses to send proxy materials on behalf of a soliciting person, should the soliciting person have the right to direct the

issuer to comply with a particular means of doing so, such as the “notice and access” model?

Yes.

If the issuer relied on the “notice and access” model in a previous proxy season, should it be required to share information with a soliciting person about the number of shareholders who requested copies in a past season?

Yes.

Should we revise Rules 14b-1 and 14b-2 to explicitly require intermediaries to send proxy or other soliciting materials on behalf of soliciting persons other than issuers?

Yes.

Are such revisions necessary or appropriate even if we do not adopt the “notice and access” proposal?

No.

Should the proposed “notice and access” model be available for transactions involving business combination transactions?

Yes, but after a lag.

Why or why not?

This is the most contentious use of the model. It is the use which has the highest likelihood of significant disruptive impact. Therefore, it should be phased in slowly. (We mean slowly in “internet time.”)

Business combination transactions sometimes are the object of a proxy contest. Would this prohibition unnecessarily harm the ability of persons opposed to the transaction to undertake an efficient contest?

See our comments above.

Exchange Act Rule 13e-3⁹¹ imposes certain requirements on issuers that are undertaking what are commonly referred to as “going-private transactions” or “Rule 13e-3 transactions.” Should the “notice and access” model not be available with regard to proxy materials related to those transactions?

The “notice and access” model should be available with regard to proxy materials related to going-private transactions.”

Should the “notice and access” model not be available in other types of transactions?

No. The “notice and access” model should be available with regard to proxy materials related to other types of transactions.

For example, should it apply to roll-up transactions, liquidations of assets, or reverse stock splits?

Yes.

Are there other matters to which the proposed “notice and access” model should not apply?

No.

For registered investment companies, are there any types of matters (e.g., changes in investment adviser or management and distribution fee increases) to which the proposed model should not apply?

No.

IV. General Request for Comment

See above.

V. Paperwork Reduction Act

We agree that "Proposed Rule 3b-10 would not impose a new collection of information within the meaning of the Paperwork Reduction Act of 1995."

VI. Consideration of the Costs and Benefits of the Proposed Rule

The Commission is sensitive to the costs and benefits that result from its rules. We have identified certain costs and benefits of the proposed rule and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis. The Commission requests data to quantify the costs and the value of the benefits identified.

C. Benefits

We agree that "Possible benefits of the proposed amendments include the following: (1) more rapid dissemination of proxy information to shareholders over the Internet; (2) reduced printing and mailing costs for issuers and their shareholders; and (3) reduced costs for other soliciting parties engaging in proxy contests. We expect potential cost reductions in printing and mailing and a possible decrease in the costs associated with proxy contests to be the most significant economic benefits."