

SEC ADOPTS "NOTICE AND ACCESS" MODEL FOR AVAILABILITY OF PROXY MATERIALS

The Securities and Exchange Commission has amended the proxy rules to permit issuers to deliver proxy materials to shareholders electronically via a website.

Under the new rules an issuer may make proxy materials available to shareholders by mailing a "Notice of Internet Availability of Proxy Materials" at least 40 calendar days prior to a meeting and, no later than the date on which this notice is sent to shareholders, posting a proxy card on a designated website where the proxy materials are available. The new rules do not restrict issuers from providing the proxy materials to shareholders by other permissible means, such as paper delivery or obtaining affirmative consents for electronic delivery pursuant to existing SEC guidance.

Issuers may begin to use the "notice and access" model on July 1, 2007. As a practical matter, this means that issuers may use this method of delivery for shareholder meetings held on or after August 10, 2007. The new rules do not apply to shareholder meetings in connection with business combination transactions.

Please contact Paul De Rosa (412-297-4821) at Cohen & Grigsby, P.C. for further information or if you have any questions concerning this topic.

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What is the "notice and access" model?

The "notice and access" model permits issuers on a voluntary basis to post proxy materials on a publicly accessible website (other than the SEC's EDGAR website) and to notify shareholders that the proxy materials are available.

What must the notice sent to shareholders contain?

- The notice must contain a prominent bold-face legend in the form prescribed by the SEC's rules and attached as Annex A.
- Among other things, the notice advises shareholders of the meeting, the website address where they can access the proxy materials and that they can request a paper or e-mail copy of such materials.
 - The notice must specifically identify the website address where the proxy materials are available so that it leads shareholders directly to the proxy materials and shareholders are not required to browse the website to locate the materials.
- The notice must also include the following information in plain-English:
 - The date, time, and location of the meeting and information on how to obtain directions to the meeting.
 - A description of the matters to be acted on and the issuer's recommendations with respect to such matters.
 - A toll-free telephone number, an e-mail address and website address where the shareholder can request a copy of the proxy materials.
 - Instructions on how to access the proxy card and any required control/ identification numbers.
- No proxy card or other materials may accompany the notice except for any notice of a shareholder meeting required under state corporation law and a reply card for requesting a paper or e-mail copy of the proxy materials.
- No information may be included in the notice beyond that permitted by the SEC's rules. For example, the issuer may not include any supporting statements in favor of a recommendation.

When must the notice be sent to shareholders?

An issuer must send the notice to shareholders at least 40 calendar days prior to date of the shareholders' meeting. If action is being taken by written consent the notice must be sent at least 40 calendar days prior to the date that consents may be used to effect the corporate action.

For purposes of this calculation, the first day of the period is the day on which the issuer sends the notice and the 40th day is the day prior to the meeting date or date of the corporate action.

When may a proxy card first be sent to shareholders?

An issuer may not furnish a proxy card with the initial notice. However, an issuer may mail a proxy card, a telephone number for telephonic voting or any other means for executing a proxy 10 calendar days after mailing the initial notice provided that either a copy of the initial notice or the proxy statement and annual report are included with the proxy card. The waiting period gives shareholders time to access the proxy materials on the website or request a copy of the proxy materials before receiving a proxy card. Issuers need not wait 10 calendar days if they provide a copy of the proxy statement and the annual report along with the proxy card.

When must the proxy materials be posted on the website?

The issuer must post the proxy materials on a website other than the SEC's EDGAR website no later than the time at which it sends the notice to shareholders in order that the materials are electronically available when shareholders receive the notice.

Any additional soliciting materials required to be filed with the SEC must be posted on the website no later than the day that these additional materials are first sent to shareholders or made public.

What must the website contain?

In addition to the proxy statement and any other proxy materials the issuer must provide shareholders with at least one method of executing a proxy vote as soon as the shareholder is able to electronically access the proxy statement. Such methods may be an electronic voting platform linked to the website where the proxy materials are posted or a telephone number for executing a proxy.

The proxy materials must be provided both in a format that is readily searchable, such as HTML, and in a format that provides a version of the materials that is substantially identical to the paper version of the materials and is convenient for printing and viewing online (e.g., a PDF version).

How long must the proxy materials remain available?

The proxy materials must remain available on the designated website through the conclusion of the shareholders' meeting.

Is the notice required to be filed with the SEC?

Yes. The form of notice is required to be filed with the SEC as additional soliciting material pursuant to Rule 14a-6(b) no later than the date the notice is first sent or given to shareholders.

Can shareholders request paper or e-mail copies of the proxy materials?

Yes. Issuers must provide a paper or e-mail copy of the proxy materials to shareholders within three business days of receiving a request. Shareholders can request to receive a paper or e-mail copy of the proxy materials for the particular meeting to which the notice relates, or permanently elect to receive a paper or e-mail copy of the proxy materials for all future meetings. Shareholders may request a copy of the proxy materials until one year after the meeting.

Is the notice subject to the SEC's "householding" rules?

Yes. Issuers may send a single copy of the notice to multiple shareholders residing at the same address so long as the SEC's householding rules are satisfied.

Can persons other than the issuer utilize the "notice and access" model?

Yes. However, any person other than the issuer must send its notice to shareholders by the later of 40 days prior to the meeting or 10 days after the issuer sends out its proxy statement or notice to shareholders. The soliciting person must include the agenda items in its notice only to the extent known but may provide a partial proxy card in which event the notice must clearly state whether execution of that card will invalidate the shareholder's earlier vote on the other matters reflected on the issuer's proxy card. The rules also allow a soliciting person other than the issuer to solicit proxies only from a select group of shareholders.

How does the "notice and access" model affect brokers and other intermediaries?

- An intermediary is required to use the "notice and access" model upon the issuer's or other soliciting person's request. An intermediary cannot independently elect to use the "notice and access" model but may deliver proxy materials to a beneficial owner electronically if the beneficial owner has previously affirmatively consented to electronic delivery.

- An issuer or other soliciting person must provide the necessary information sufficiently in advance for the intermediary to prepare and send its own notice at least 40 days before the meeting date.
 - The intermediary's notice generally must contain the same information as the issuer's notice and must contain instructions on how to access the request for voting instructions on the intermediary's website.
 - The intermediary may direct beneficial owners to either the issuer's website or its own website to access the proxy materials.
 - Intermediaries are not permitted to include a request for voting instructions with the initial notice.
 - At the issuer's request, the intermediary must send beneficial owners a request for voting instructions 10 days or more after the intermediary sent the original notice.
 - The request for voting instructions must be accompanied by either a copy of the proxy statement or the intermediary's original notice.
 - A beneficial owner must request a paper or e-mail copy of the proxy materials from the intermediary who must then request a copy of these materials from the issuer or other soliciting person within three business days of receiving the request and must forward the materials to the beneficial owner within three business days after receipt.
 - The notice must make clear that if a shareholder elects to receive paper or email copies of proxy materials for a meeting, the intermediary will apply that request to all securities of all issuers held by the intermediary on behalf of the beneficial owner.

ANNEX A

LEGEND FOR NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS

"Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].

1. This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

2. The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].

3. If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery."