

EXCERPTED FROM:
SECURITIES AND EXCHANGE COMMISSION
FINAL RULE
RELEASE NOS. 34-56135
SHAREHOLDER CHOICE REGARDING PROXY MATERIALS

SUMMARY: ... amendments to the proxy rules under the Securities Exchange Act of 1934 to provide shareholders with the ability to choose the means by which they access proxy materials ... issuers and other soliciting persons will be required to post their proxy materials on an Internet Web site and provide shareholders with a notice of the Internet availability of the materials. The issuer or other soliciting person may choose to furnish paper copies of the proxy materials along with the notice. If the issuer or other soliciting person chooses not to furnish a paper copy of the proxy materials along with the notice, a shareholder may request delivery of a copy at no charge to the shareholder.

Compliance Dates: “Large accelerated filers,” ... must comply with the amendments regarding proxy solicitations commencing on or after January 1, 2008. Registered investment companies, persons other than issuers, and issuers that are not large accelerated filers conducting proxy solicitations (1) may comply with the amendments regarding proxy solicitations commencing on or after January 1, 2008 and (2) must comply with the amendments regarding proxy solicitations commencing on or after January 1, 2009.

... the final rules do not require an issuer or other soliciting person to establish an Internet voting platform. Similarly, the rules do not require an issuer or other soliciting person that sends a full set of proxy materials to shareholders to prepare its proxy materials at least 40 days prior to the meeting.

Description of the Amendments

... an issuer that is required to furnish proxy materials to shareholders under the Commission’s proxy rules must post its proxy materials on a specified, publicly-accessible Internet Web site (other than the Commission’s EDGAR Web site) and provide record holders with a notice informing them that the materials are available and explaining how to access those materials.* Intermediaries also must follow the notice and access model to furnish an issuer’s proxy materials to beneficial owners. Persons other than the issuer conducting their own proxy solicitations must comply with the notice and access model as well.

*The notice and access model does not apply to a proxy solicitation related to a business combination transaction. Also, as with the voluntary model, the notice and access model does not apply if the law of the issuer’s state of incorporation would prohibit them from furnishing proxy materials in that manner.

A) Two Options: Introduction

The notice and access model allows an issuer to select either of the following two options to provide proxy materials to shareholders: (1) the “notice only option” and (2) the “full set delivery option.” Under the notice only option, ... the issuer must post its proxy materials on an Internet Web site and send a Notice to shareholders to inform them of the electronic availability of the proxy materials at least 40 days before the shareholders meeting. If an issuer follows this option, it must respond to shareholder requests for copies, including a shareholder’s permanent request for paper or e-mail copies of proxy materials for all shareholder meetings.

Under the full set delivery option, an issuer can deliver a full set of proxy materials to shareholders, along with the Notice. An issuer need not prepare and deliver a

separate Notice if it incorporates all of the information required to appear in the Notice into its proxy statement and proxy card (or information statement) and it need not respond to requests for copies as required under the notice only option.

An issuer does not have to choose one option or the other as the exclusive means for providing proxy materials to shareholders. Rather, an issuer may use the notice only option to provide proxy materials to some shareholders and the full set delivery option to provide proxy materials to other shareholders.

1) The Notice Only Option: Sending a Notice Without a Full Set of Proxy Materials

We are adopting the notice only option substantially as proposed. Under the notice only option, an issuer will follow the same procedures that we have established under the existing notice and access model that issuers may choose to comply with on a voluntary basis for proxy solicitations commencing on or after July 1, 2007. Under these procedures, the issuer must send a Notice to shareholders at least 40 calendar days before the shareholder meeting date, or if no meeting is to be held, at least 40 calendar days before the date that votes, consents, or authorizations may be used to effect a corporate action, indicating that the issuer's proxy materials are available on a specified Internet Web site and explaining how to access those proxy materials. Issuers may household the Notice ...

The Notice must contain the following information:

- A prominent legend in bold-face type that states:

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

- **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.**
- **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].**
- **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.”**
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on, and the issuer's recommendations, if any, regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site;
- (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;

- Any control/identification numbers that the shareholder needs to access his or her proxy card;
- Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement; and
- Information about attending the shareholder meeting and voting in person.

The Notice must be written in plain English. The Notice may contain only the information specified by the rules and any other information required by state law, if the issuer chooses to combine the Notice with any shareholder meeting notice that state law may require. However, the Notice may contain a protective warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy.

In addition, a registered investment company may send its prospectus and/or report to shareholders together with the Notice. The issuer must file its Notice with the Commission ... no later than the date that it first sends the Notice to shareholders.

Design of the specified publicly-accessible Web site

An issuer must make all proxy materials identified in the Notice publicly accessible, free of charge, at the Web site address specified in the Notice on or before the date that the Notice is sent to the shareholder. The specified Web site may not be the Commission's EDGAR system. The issuer also must post any subsequent additional soliciting materials on the Web site no later than the date on which such materials are first sent to shareholders or made public. The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.*

*One commenter asked the Commission to consider the costs of requiring such formats. See letter from ICI. We believe that requiring readable and printable formats is important so that shareholders have meaningful access to the proxy materials. When determining the readability and printability of formats, issuers should consider the size of the files because many shareholders do not have broadband connections. Although some types of files may be suitable for persons with high-speed Internet access, the readability and printability of a document may be affected significantly by the time that it takes to download the document.

The proxy materials must remain available on that Web site through the conclusion of the shareholder meeting.

Means to vote

An issuer also must provide shareholders with a method to execute proxies as of the time the Notice is first sent to shareholders. The final rules do not require ... an issuer to establish an Internet voting platform. Rather, an issuer can satisfy this requirement through a variety of methods, including providing an electronic voting platform, a toll-free telephone number for voting, or a printable or downloadable proxy card on the Web site. ... if a telephone number for executing a proxy is provided, such a telephone number may appear on the Web site, but not on the Notice because it would enable a shareholder to execute a proxy without having access to the proxy statement.

Request for paper or e-mail copies

An issuer must provide paper or e-mail copies at no charge to shareholders requesting such copies. It also must allow shareholders to make a permanent election to receive paper or e-mail copies of proxy materials distributed in connection with future proxy solicitations, and maintain records of those elections. Further, the issuer must provide a toll-free telephone number, e-mail address, and Internet Web site address as a means by

which a shareholder can request a copy of the proxy materials for the particular shareholder meeting referenced in the Notice or make a permanent election to receive copies of the proxy materials on a continuing basis with respect to all meetings. The issuer also may include a pre-addressed, postage-paid reply card with the Notice that shareholders can use to request a copy of the proxy materials.

Delivery of a proxy card

An issuer may not send a paper or e-mail proxy card to a shareholder until 10 calendar days or more after the date it sent the Notice to the shareholder, unless the proxy card is accompanied or preceded by a copy of the proxy statement and any annual report, if required, to security holders sent via the same medium. This provision is intended to assist an issuer's efforts to solicit proxies if its initial efforts have not produced adequate response. ... Moreover, the shareholder also would receive another copy of the Notice with the proxy card.

Web site confidentiality

An issuer must maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing that Web site. An issuer also may not use any e-mail address provided by a shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder. The issuer also may not disclose a shareholder's e-mail address to any person, except to its agent or an employee of the issuer. This disclosure may be made only for the purpose of facilitating delivery of a copy of the issuer's proxy materials by the agent or employee to a shareholder requesting a copy of the materials.

...

Although we recognize that the confidentiality requirements may increase the cost of maintaining an Internet Web site, we believe that the protection of shareholder information is important. A rule that permits issuers to discover the identity of a person accessing the Web site could effectively negate a beneficial owner's ability under the proxy rules to object to an intermediary's disclosure of that beneficial owner's identity to the issuer. In addition, a rule without this prohibition on the issuer may make some shareholders hesitant to access the proxy disclosures, which would not promote the purposes of this rule. Therefore we have retained this provision of the rule to help prevent potential abuses of shareholder information.

We do not believe that this requirement will impose any undue burden on companies. Under the rule, a company must refrain from installing cookies and other tracking features on the Web site on which the proxy materials are posted. This may require segregating those pages from the rest of the company's regular Web site or creating a new Web site. However, the rule does not require the company to turn off the Web site's connection log, which automatically tracks numerical IP addresses that connect to that Web site. Although in most cases, this IP address does not provide companies with sufficient information to identify the accessing shareholder, companies may not use these numbers to attempt to find out more information about persons accessing the Web site. In addition, shareholders still concerned about their anonymity can request copies from their intermediaries.

2) The Full Set Delivery Option: Sending a Notice with a Full Set of Proxy Materials

Under the "full set delivery option," an issuer will follow procedures that are substantially similar to the traditional means of providing proxy materials in paper. Under

this option, in addition to sending proxy materials to shareholders as under the traditional method, an issuer must:

- Send a Notice accompanied by a full set of proxy materials, or incorporate all of the information required to appear in the Notice into the proxy statement and proxy card; and
- Post the proxy materials on a publicly accessible Web site no later than the date the Notice was first sent to shareholders.

Issuers may household the Notice and other proxy materials ...

Contents of the Notice or incorporation of Notice information

Under the final rules ... a separate Notice is not required if the issuer presents all of the information required in the Notice in its proxy statement and proxy card. ... However, an issuer may prepare a separate Notice if it desires.*

*Because issuers are obligated to provide proxy materials to beneficial owners, we recommend that issuers place only information required by the Notice that is relevant to all shareholders (record and beneficial owners) in the proxy statement, and present information that is relevant only to record holders on the proxy card so that beneficial owners are not confused by information in the proxy statement that would only be applicable to record holders. Required information disclosed on the proxy statement need not be repeated on the proxy card.

The information required in the Notice, or proxy materials if no separate Notice is prepared, includes much, but not all, of the information that is required under the notice only option, including the following:

- A prominent legend in bold-face type that states:

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

- **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].**
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on and the issuer’s recommendations, if any, regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site;
- Any control/identification numbers that the shareholder needs to access his or her proxy card; and
- Information about attending the shareholder meeting and voting in person.

The issuer is not required to provide paper or e-mail copies upon request to shareholders to whom it has furnished proxy materials under this option because it would already have provided those shareholders with a copy of the proxy materials as part of its initial distribution. Therefore, the issuer need not provide instructions in the Notice as to how shareholders can request paper or e-mail copies of the proxy materials.

If the issuer prepares a separate Notice, it must be written in plain English. The Notice may contain only the information specified by the rules and any other information required by state law, if the issuer chooses to combine the Notice with any shareholder meeting notice that state law may require. However, the Notice may contain a protective

warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy. The issuer must file any such separate Notice with the ... no later than the date that it first sends the Notice to shareholders.*

Design of the specified publicly-accessible Web site

An issuer must post all proxy materials identified in the Notice, or proxy statement and proxy card if no separate Notice is prepared, on the publicly accessible Web site address specified in the Notice on or before the date that it sends the proxy materials to shareholders. The specified Web site may not be the Commission's EDGAR system. The issuer also must post any subsequent additional soliciting materials on the Web site no later than the date on which such materials are first sent to shareholders or made public. The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper. The proxy materials must remain available on that Web site through the conclusion of the shareholder meeting.

*If the issuer incorporates the contents of the Notice into the proxy materials, a separate filing is not required.

Means to vote

The notice and access model requires an issuer to provide shareholders with a method to execute proxies as of the time the Notice is first sent to shareholders. If an issuer follows the full set delivery option, the proxy card or request for voting instructions included in the full set of proxy materials satisfies this requirement. Therefore, the issuer does not need to provide another means for shareholders to execute proxies or submit voting instructions for accounts receiving proxy materials through the full set delivery option.

Repeat Delivery of a Proxy Card

Even though a proxy card already will be included in the full set of proxy materials, an issuer relying on the full set delivery option subsequently may choose to deliver another copy of the proxy card to shareholders who have not returned the card. This is permissible under the current rules, and issuers commonly do so as a reminder for shareholders to vote. The reminder proxy card does not have to be accompanied by the Notice because the reminder card would have been preceded by the proxy statement via the same medium and may be sent at any time after the full set of proxy materials has been sent.

Web site confidentiality

As under the notice only option, an issuer must maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing that Web site. An issuer also may not use any e-mail address provided by a shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder. The issuer also may not disclose a shareholder's e-mail address to any person other than the issuer's employee or agent to the extent necessary to send a copy of the proxy materials to a requesting shareholder.

3) Differences Between the Full Set Delivery Option and the Notice Only Option

The full set delivery option varies from the notice only option in the following ways:

- An issuer may accompany the Notice with a copy of the proxy statement, annual report to security holders, if required ... and a proxy card;
- An issuer need not prepare a separate Notice if the issuer incorporates all of the Notice information into the proxy statement and proxy card;

- Because the issuer already has provided shareholders with a full set of proxy materials, the issuer need not provide the shareholder with copies of the proxy materials upon request;
- Because shareholders will not need extra time to request paper or e-mail copies, the issuer need not send the Notice and full set of proxy materials at least 40 days before the meeting date;
- Because the full set of proxy materials includes a proxy card or request for voting instructions, the issuer need not provide another means for voting at the time the Notice is provided unless it chooses to do so; and
- The issuer need not include the part of the prescribed legend relating to security holder requests for copies of the documents and instructions on how to request a copy of the proxy materials.

Inclusion of a Full Set of Proxy Materials

The notice only option does not permit an issuer to accompany the Notice with any other documents.* In contrast, an issuer relying on the full set delivery option will deliver a full set of proxy materials, including a proxy statement, annual report to shareholders if required ... and a proxy card, along with the Notice. Under this option, when the Notice is initially sent, it must be accompanied by all of these documents, not just some of them. For example, an issuer may not send only the Notice and a proxy card to a shareholder as part of its initial distribution of proxy materials.**

*We note however, that under the notice only option, an issuer may send the Notice and proxy card together 10 days or more after it initially sends the Notice ...

**However, it may send a reminder proxy card at any time after it initially sends the Notice accompanied by the full set of proxy materials.

Request for Copies of the Proxy Materials

As noted above, because an issuer relying on the full set delivery option will send shareholders copies of all of the proxy materials along with the Notice, there is no need for the issuer to provide these shareholders with a means to request a copy of the proxy materials. The issuer therefore may exclude information from the Notice on how a shareholder may request such copies...

40-Day Deadline

Under the full set delivery option, if an issuer or other soliciting person sends a full set of the proxy materials with the Notice, it need not comply with the 40-day ... for sending the Notice. Thus, if an issuer is unable or unwilling to meet the 40-day deadline, it still may begin its solicitation after that deadline provided that it complies with the full set delivery option. ... an issuer must comply with the 40-day period only if it intends to comply with the notice only option.

B) Implications of the Notice and Access Model for Intermediaries

An issuer or other soliciting person must provide each intermediary with the information necessary to prepare the intermediary's Notice in sufficient time for the intermediary to prepare and send its Notice to beneficial owners within the timeframes of the model. An issuer that complies with the notice only option must provide the intermediary with the relevant information in sufficient time for the intermediary to prepare and send the Notice and post the proxy materials on the Web site at least 40 calendar days before the shareholder meeting date.*

*If a soliciting person other than the issuer elects to follow the notice only option, the Notice must be sent to shareholders by the later of: (1) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used

to effect the corporate action; or (2) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders.

An issuer that complies with the full set delivery option need not comply with the 40-day deadline. The issuer need only provide the Notice information to the intermediary in sufficient time for the intermediary to prepare and send the Notice along with the full set of materials provided by the issuer. Under this option, as with the traditional method of delivering proxy materials, the intermediary must forward the issuer's full set of proxy materials to beneficial owners within five business days of receipt from the issuer or the issuer's agent.

The intermediary's Notice generally must contain the same types of information as an issuer's Notice, but must be tailored specifically for beneficial owners. With respect to beneficial owners who receive a Notice under the notice only option, the intermediary also must forward paper or e-mail copies of the proxy materials upon request, permit the beneficial owners to make a permanent election to receive paper or e-mail copies of the proxy materials, keep records of beneficial owner preferences, provide proxy materials in accordance with those preferences, and provide a means to access a request for voting instructions for its beneficial owner customers no later than the date the Notice is first sent.

When the issuer is delivering full sets of proxy materials to beneficial owners, the intermediary must either prepare a separate Notice and forward it with the full set of proxy materials, or incorporate any information required in the Notice, but not appearing in the issuer's proxy statement, in its request for voting instructions.

C) Reliance on the Notice and Access Model by Soliciting Persons Other Than the Issuer

Under the amendments, a soliciting person other than the issuer also must comply with the notice and access model. Such a person may solicit proxies pursuant to the notice only option, the full set delivery option, or a combination of the two.*

*That is, as in the case of an issuer, a soliciting person other than the issuer may solicit some shareholders using the notice only option, while soliciting other shareholders using the full set delivery option.

Consistent with the existing proxy rules and the voluntary model, the amendments treat such soliciting persons differently from the issuer in certain respects. First, a soliciting person is not required to solicit every shareholder or to furnish an information statement to shareholders not being solicited. It may select the specific shareholders from whom it wishes to solicit proxies. For example, under the notice and access model, a soliciting person other than the issuer can choose to send Notices only to those shareholders who have not previously requested paper copies.*

*... an issuer is required to either mail the Notice on behalf of the soliciting person, in which case the soliciting person can request that the issuer send Notices only to shareholders who have not requested paper copies, or provide the soliciting person with a shareholder list, indicating which shareholders have requested paper copies.

Second, if a soliciting person other than the issuer elects to follow the notice only option, it must send a Notice to shareholders by the later of:

- 40 calendar days prior to the shareholder meeting date or, if no meeting is to be held, 40 calendar days prior to the date that votes, consents, or authorizations may be used to effect the corporate action; or
- 10 calendar days after the date that the issuer first sends its proxy materials to shareholders.

This timing requirement does not apply to a solicitation pursuant to the full set delivery model.

If, at the time the Notice is sent, a soliciting person other than the issuer is not aware of all matters on the shareholder meeting agenda, the Notice must provide a clear and

impartial identification of each separate matter to be acted upon at the meeting, to the extent known by the soliciting person. The soliciting person's Notice also must include a clear statement that there may be additional agenda items that the soliciting person is unaware of, and that the shareholder cannot direct a vote for those items on the soliciting person's proxy card provided at that time. If a soliciting person other than the issuer sends a proxy card that does not reference all matters that shareholders will act upon at the meeting, the Notice must clearly state whether execution of the proxy card would invalidate a shareholder's prior vote using the issuer's card on matters not presented on the soliciting person's proxy card.

Deadline for Responding to Requests for Copies After the Meeting

... with respect to requests for copies received after the conclusion of the meeting, an issuer is not required to use First Class mail and is not required to respond within three business days.