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SEC Adopts Universal E-Proxy Rules

By *Zachary Stump* and *Scott Chenevert*

On July 26, 2007, the Securities and Exchange Commission (“SEC”) adopted further amendments to its proxy rules under the Securities Exchange Act of 1934 mandating that issuers furnish proxy materials (proxy statements, proxy cards, and annual reports) to shareholders through a “notice and access” procedure for all proxy solicitations other than business combinations. (Click [here](#) to read the SEC’s release regarding the final rules).

These amendments elaborate on the voluntary “notice and access” procedures adopted by the SEC in January 2007 and discussed in our E*Zine titled “[SEC Adopts Internet Proxy Rules](#).” Under the mandatory model, issuers will have two options for furnishing proxy materials to shareholders: (1) the “notice only” option or (2) the “full set delivery” option. Issuers are not required to use one method as the exclusive means for providing proxy materials to shareholders; issuers can use different methods for different shareholders. Shareholders still have the choice to receive paper or e-mail copies of the materials, including the ability to make a one-time permanent request for paper or e-mail copies of proxy materials for all shareholder meetings.

Large accelerated filers (issuers having a public float of \$700 million or more) must comply with the amended rules for proxy solicitations beginning on or after January 1, 2008; other issuers and registered investment companies must comply beginning on or after January 1, 2009.

Notice Only

Under the “notice only” option, the issuer is required to furnish proxy materials to shareholders by (1) posting them on a publicly available website (other than the SEC’s EDGAR website) and (2) mailing a “Notice of Internet Availability of Proxy Materials” (“Notice”) at least 40 calendar days before the shareholder meeting, informing them of the availability of the materials on the website. The Notice requirements are explained in detail in our E*Zine titled “[SEC Adopts Internet Proxy Rules](#).”

Although a proxy card may not accompany the Notice, an issuer may mail a paper proxy card accompanied by another copy of the Notice 10 or more calendar days after mailing the original Notice. An issuer may send a paper proxy card to shareholders before the end of the 10-day period only if the proxy card is accompanied or preceded by a copy of the proxy statement and annual report through the same delivery medium as the proxy card (*i.e.*, paper or e-mail).

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Under the “notice only” option, a shareholder may request receipt of paper or e-mail copies of the proxy materials from the issuer. The issuer must provide paper or e-mail copies of the proxy materials via first class mail or e-mail, within three business days of the request. In addition, shareholders may make a permanent request to receive paper or e-mail copies of the proxy materials for all shareholder meetings.

Full Set Delivery

The “full set delivery” option is the same as the traditional process of providing proxy materials in paper form, with one key change. In addition to mailing physical copies of proxy materials to its shareholders, the issuer must also post the proxy materials on a publicly available website (other than the SEC’s EDGAR website) no later than the date it first sends its proxy materials. The issuer must notify the shareholders of the materials’ online availability by either including a Notice with the proxy materials or incorporating the contents of the Notice into the proxy statement and proxy card mailed to shareholders. Under the “full set delivery” option, since the issuer will provide a full set of proxy materials with the Notice, the issuer is not required to respond to shareholder requests for copies of the proxy materials or comply with the 40-day delivery deadline.

Impact on Intermediaries and Soliciting Persons Other than the Issuer

Intermediaries (such as banks, brokers, and others who hold shares on behalf of beneficial owners) must follow the same delivery option the issuer follows. Under the “notice only” option, intermediaries must prepare and send their own notice (similar to the issuer’s Notice) to beneficial owners at least 40 days before the meeting date. Issuers are required to provide the intermediaries with the necessary information in sufficient time for the intermediaries to prepare and send their notices on time. Under the “full set delivery” option, the intermediary must forward the proxy materials to the beneficial owner within five business days following receipt of the issuer’s proxy materials, which is the current practice. Soliciting persons other than the issuer conducting their own proxy solicitations must also comply with the new rules.

Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities practice group:

Curtis R. Hearn
Jones Walker
201 St. Charles Ave., 51st Fl.
New Orleans, LA 70170-5100
ph. 504.582.8308
email chearn@joneswalker.com

CORPORATE AND SECURITIES ATTORNEYS

Dana Bandera
Allison C. Bell
Sarah B. Belter
Robert B. Bieck, Jr.
John C. Blackman, IV
Robert R. Casey
Monique A. Cenac
Scott D. Chenevert
Edward B. Crosland
Mark A. Cunningham
Douglas N. Currault II
Justin D. Deshotel
Allen E. Frederic, III
Asher J. Friend
H. Hughes Grehan
Carl C. Hanemann
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E. Ansley Seaver
Kelly C. Simoneaux
David P. Sofge
Zachary R. Stump
Gita A. Timmerman
Jarred G. Trauth
Richard P. Wolfe
Scott Thomas Zander