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17 CFR Part 240
Shareholder Choice Regarding Proxy Materials; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–56135; IC–27911; File No. S7–03–07]

RIN 3235–AJ79

Shareholder Choice Regarding Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting 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. Under the amendments, 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.

DATES: *Effective Date:* January 1, 2008, except § 240.14a–16(d)(3) and § 240.14a–16(j)(3) are effective October 1, 2007.

Compliance Dates: ''Large accelerated filers,'' as that term is defined in Rule 12b–2 under the Securities Exchange Act of 1934, not including registered investment companies, 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.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 14a–3,[1] 14a–7,[2] 14a–16,[3] 14a–101,[4] 14b–1,[5] 14b–2,[6] 14c–2,[7] and 14c–3[8] under the Securities Exchange Act of 1934.[9]

Table of Contents

I. Introduction

On January 22, 2007, we proposed amendments to the proxy rules that would require all issuers and other soliciting persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the electronic availability of the proxy materials.[10] Under the proposal, issuers and other soliciting persons would be permitted to deliver paper or e-mail copies of their proxy materials to shareholders along with the notice. The proposal was intended to provide all shareholders with the ability to choose the means by which they access proxy materials, including via paper, e-mail or the Internet, while still affording issuers and other soliciting persons flexibility in determining how to furnish their proxy materials to shareholders.[11] In a companion release issued on the same date, we adopted the ''notice and access'' model that issuers and other soliciting persons may comply with on a voluntary basis for proxy solicitations commencing on or after July 1, 2007.[12]

We received 23 comment letters on the proposal. The vast majority of commenters generally supported our goal of increasing reliance on technology to improve proxy distribution.[13] However, many of the

[1] 17 CFR 240.14a–3.
[2] 17 CFR 240.14a–7.
[3] 17 CFR 240.14a–16.
[4] 17 CFR 240.14a–101.
[5] 17 CFR 240.14b–1.
[6] 17 CFR 240.14b–2.
[7] 17 CFR 240.14c–2.
[8] 17 CFR 240.14c–3.
[9] 15 U.S.C. 78a *et seq.*

[10] See Release No. 34–55147 (Jan. 22, 2007) [72 FR 4176].

[11] For purposes of this release, the term ''proxy materials'' includes proxy statements on Schedule 14A [17 CFR 240.14a–101], proxy cards, information statements on Schedule 14C [17 CFR 240.14c–101], annual reports to security holders required by Rules 14a–3 [17 CFR 240.14a–3] and 14c–3 [17 CFR 240.14c–3] of the Exchange Act, notices of shareholder meetings, additional soliciting materials, and any amendments to such materials. For purposes of this release, the term does not include materials filed under Rule 14a–12 [17 CFR 240.14a–12].

[12] Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[13] See letters from AARP, American Business Conference (ABC), Automatic Data Processing Brokerage Services Group, now known as Broadridge Financial Solutions, Inc. (ADP), Bank of

commenters thought that the Commission's timetable for adopting the proposed amendments was too aggressive.[14] They suggested that we postpone adoption of the proposal until we gain experience from operation of the voluntary rule.

Although we acknowledge the timing concerns raised by the commenters, we think that it is appropriate to adopt the proposal at this time because the model that we are adopting will provide shareholders with enhanced choices without changing significantly the obligations of an issuer or other soliciting person. The only new obligations that the revised notice and access model will impose on issuers and other soliciting persons compared to the voluntary rule is that an issuer or other person soliciting proxies who wishes to initially furnish a full set of proxy materials in paper to shareholders will be required to: (1) Post those proxy materials on an Internet Web site; and (2) include a Notice of Internet Availability of Proxy Materials (Notice) with the full set or incorporate the Notice information into its proxy statement and proxy card.[15]

Furthermore, under the phase-in schedule that we are establishing for expanding the notice and access model to all issuers and other soliciting persons, the largest public companies will become subject to the model a year before any other companies become subject to the model. Most of these companies already appear to post their proxy materials and Exchange Act reports on an Internet Web site.[16] A large accelerated filer (not including registered investment companies) will have to comply with the notice and access model for solicitations beginning on or after January 1, 2008.[17] All other issuers (including registered investment companies) and soliciting persons other than issuers will have to comply with the model for solicitations beginning on or after January 1, 2009. This tiered system of implementation addresses the commenters' timing concerns by providing the Commission with a significant test group of large accelerated filers from which to obtain operating data and more than a full year to study the effects of the notice and access model and make any necessary revisions to the rules before they apply to other entities.

In addition, several commenters were concerned that the proposals would have required all issuers to establish Internet voting platforms [18] or to prepare their proxy materials at least 40 days prior to the shareholder meeting,[19] and therefore would impose significant costs on issuers. As discussed in detail below, the final rules do not require, and the proposals would not have required, 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.

II. Description of the Amendments

Under 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.[20] 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. By requiring Internet availability of proxy materials, the amendments are designed to enhance the ability of investors to make informed voting decisions and to expand use of the Internet to ultimately lower the costs of proxy solicitations.

A. Notice and Access Model for Issuers: Two Options for Making Proxy Materials Available to Shareholders

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, an issuer will comply with the same requirements that we adopted in connection with the voluntary notice and access model. Under these requirements, 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,[21] 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

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New York (BONY), U.S. Chamber of Commerce (Chamber of Commerce), Council of Institutional Investors (CII), Commerce Finance Printers Corp. (Commerce Finance Printers), Computershare, Dechert LLP (Dechert), Kathryn Elmore and Michael Allen (Elmore & Allen), Investment Company Institute (ICI), Infosys Technologies Limited (Infosys), MailExpress, Reed Smith LLP (Reed Smith), Registrar and Transfer Company (Registrar and Transfer), Karl W. Reimers (Reimers), Ayal Rosenthal (Rosenthal), Society of Corporate Secretaries and Governance Professionals (SCSGP), Securities Industry and Financial Markets Association (SIFMA), Mark Snyder (Snyder), Shareholder Services Association (SSA), and Securities Transfer Association, Inc. (STA).

[14] See letters from AARP, ABC, ADP, BONY, Chamber of Commerce, CII, Computershare, ICI, Reed Smith, Registrar and Transfer, SCSGP, SIFMA, SSA, and STA.

[15] The effective result of the rules is that an intermediary must prepare Notices (or incorporate Notice information in its request for voting instructions) and create Web sites for all issuers for which securities are held by the intermediary's customers, rather than only for issuers who elect to follow the notice and access model under the voluntary system.

[16] Based on a random sampling of 150 large accelerated filers, approximately 80% of such filers already post their proxy materials on a non-EDGAR Web site, while almost all of the rest provide a link on their Web site to the Commission's EDGAR system. Only a small handful of such filers do not post their proxy materials on their Web site at all. We note, however, that currently there is no requirement that such Web sites preserve the anonymity of persons accessing the Web site. See Section II.A.1.f of this release for a description of this requirement.

[17] A large accelerated filer, as defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2], is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $700 million or more, as measured on the last business day of the issuer's most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.

[18] See letters from ABC, BONY, and Registrar and Transfer.

[19] See, for example, letters from Chamber of Commerce, CII, Commerce Financial Printers, Elmore & Allen, ICI, and STA.

[20] See revised Rule 14a–3(a). The notice and access model does not apply to a proxy solicitation related to a business combination transaction. See Rule 14a–16(m) [17 CFR 240.14a–16(m)]. 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. See Rule 14a–3(a)(3)(ii).

[21] If not soliciting proxies, an issuer may incorporate the Notice information into its information statement.

the notice only option to provide proxy materials to some shareholders and the full set delivery option to provide proxy materials to other shareholders. We describe both options in greater detail below.

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.[22] 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.[23] Issuers may household the Notice pursuant to Rule 14a–3(e).[24]

a. Contents of the Notice of Internet Availability of Proxy Materials

The Notice must contain the following information: [25]

- 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.[26] 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.[27] 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.[28] In addition, a registered investment company may send its prospectus and/or report to shareholders together with the Notice.[29] The issuer must file its Notice with the Commission pursuant to Rule 14a–6(b) [30] no later than the date that it first sends the Notice to shareholders.[31]

b. 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.[32] The specified Web site may not be the Commission's EDGAR system.[33] 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.[34] The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.[35] The proxy materials must remain available on that Web site through the conclusion of the shareholder meeting.[36]

c. 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.[37] Several commenters on the proposal questioned whether this provision would require all issuers to establish Internet voting platforms.[38] The final rules do not require, and the proposals would not have required, 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. As noted above, 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.

d. Request for Paper or E-mail Copies

An issuer must provide paper or e-mail copies at no charge to shareholders requesting such copies.[39] 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

[22] See Rule 14a–16 [17 CFR 240.14a–16].

[23] Rule 14a–16(a)(1) [17 CFR 240.14a–16(a)(1)].

[24] 17 CFR 240.14a–3(e).

[25] Rule 14a–16(d) [17 CFR 240.14a–16(d)]. Appropriate changes must be made if the issuer is providing an information statement pursuant to Regulation 14C, seeking to effect a corporate action by written consent, or is a legal entity other than a corporation.

[26] Rule 14a–16(g) [17 CFR 240.14a–16(g)].

[27] Rule 14a–16(e) [17 CFR 240.14a–16(e)].

[28] Rule 14a–16(e)(2)(ii) [17 CFR 240.14a–16(e)(2)(ii)].

[29] See new Rule 14a–16(f)(2)(iii).

[30] 17 CFR 240.14a–6(b).

[31] Rule 14a–16(i) [17 CFR 240.14a–16(i)].

[32] Rule 14a–16(b)(1) [17 CFR 240.14a–16(b)(1)].

[33] Rule 14a–16(b)(3) [17 CFR 240.14a–16(b)(3)].

[34] Rule 14a–16(b)(2) [17 CFR 240.14a–16(b)(2)].

[35] Rule 14a–16(c) [17 CFR 240.14a–16(c)]. See Section II.A.3 of Release 34–55146 (Jan. 22, 2007) [72 FR 4148]. 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.

[36] Rule 14a–16(b)(1) [17 CFR 240.14a–16(b)(1)].

[37] Rule 14a–16(b)(4) [17 CFR 240.14a–16(b)(4)].

[38] See letters from ABC, BONY, and Registrar and Transfer.

[39] Rule 14a–16(j) [17 CFR 240.14a–16(j)].

records of those elections.[40] 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.[41] 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.[42]

e. 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.[43] This provision is intended to assist an issuer's efforts to solicit proxies if its initial efforts have not produced adequate response. This is similar to many issuers' current practice of sending reminder notices and duplicate proxy cards to shareholders who have not responded to the issuer's original request for proxy voting instructions.

One commenter remarking on this aspect of the proposals expressed concern that shareholders receiving proxy cards separately from the proxy statement and annual report may make their voting decisions without the benefit of access to those disclosure documents.[44] We appreciate this concern. However, at the point that a shareholder receives such a proxy card, the shareholder already would have received a Notice that provides information on how the shareholder can access the proxy materials and request copies of the materials, if desired. Moreover, the shareholder also would receive another copy of the Notice with the proxy card. We believe that, at this point, the shareholder will have had ample opportunity to either access the proxy materials on the Internet Web site or request a copy of those materials.

f. 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.[45] 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.[46] 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.

Three commenters were concerned about the provisions of the model that require a company to maintain the designated Web site in a manner that does not infringe on the anonymity of persons accessing the Web site.[47] One commenter was concerned that the prohibition on ''cookies'' will raise the costs of maintaining Internet Web sites.[48] Conversely, one commenter was concerned that there could be potential abuses of shareholder privacy through information tracking and collection of information on Internet Web sites.[49] Similar concerns regarding potential abuses of shareholder privacy also were raised with regard to the adoption of the voluntary notice and access model.

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.[50] 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.[51] 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,[52] or incorporate all of the information required to appear in the Notice into the proxy statement and proxy card; [53] and
- Post the proxy materials on a publicly accessible Web site no later than the date the Notice was first sent to shareholders.[54]

Issuers may household the Notice and other proxy materials pursuant to Rule 14a–3(e).[55]

a. Contents of the Notice or Incorporation of Notice Information

Under the final rules that we are adopting, a separate Notice is not required if the issuer presents all of the

[40] See Rule 14a–16(d)(5) and (j)(4) [17 CFR 240.14a–16(d)(5) and (j)(4)].

[41] Rule 14a–16(d)(5) [17 CFR 240.14a–16(d)(5)].

[42] Rule 14a–16(f)(2)(i) [17 CFR 240.14a–16(f)(2)(i)].

[43] Rule 14a–16(h) [17 CFR 240.14a–16(h)].

[44] See letter from CII.

[45] Rule 14a–16(k)(1) [17 CFR 240.14a–16(k)(1)]. See Section II.A.1.b.iii of Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[46] 46 Rule 14a–16(k)(2) [17 CFR 240.14a–16(k)(2)].

[47] See letters from CII, ICI, and Reed Smith.

[48] See letter from ICI.

[49] See letter from CII.

[50] See Rules 14b–1(b) and 14b–2(b) [17 CFR 240.14b–1(b) and 240.14b–2(b)].

[51] Under the traditional proxy delivery scheme, issuers could send proxy materials to shareholders via e-mail provided they followed Commission guidance regarding such delivery, which typically required obtaining affirmative consent from individual shareholders. See Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458]. Issuers may continue to rely on such guidance to send materials electronically to shareholders. See Section II.A. of this release.

[52] A ''full set'' of proxy materials would contain (1) a proxy statement or information statement, (2) an annual report if one is required by Rule 14a–3(b) or Rule 14c–3(a), and (3) a proxy card or, in the case of a beneficial owner, a request for voting instructions, if proxies are being solicited.

[53] See new Rule 14a–16(n)(2).

[54] As discussed below, this date does not have to be at least 40 days prior to the shareholder meeting date.

[55] 17 CFR 240.14a–3(e).

information required in the Notice in its proxy statement and proxy card.[56] In the proposing release, we solicited comment on whether we should permit the issuer that is sending a full set to incorporate the information required in the Notice into the proxy statement and proxy card, rather than require that issuer to prepare a separate Notice. Although we did not receive any comment on this issue, we do not see a compelling reason to require an issuer to include a separate Notice when it already is sending a shareholder a full set of proxy materials. We believe that providing the Notice information in the proxy materials will provide shareholders with sufficient information to access the materials on the Internet, while reducing costs to issuers. However, an issuer may prepare a separate Notice if it desires.

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: [57]

- 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.[58] 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.[59]

If the issuer prepares a separate Notice, it must be written in plain English.[60] 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.[61] 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.[62] The issuer must file any such separate Notice with the Commission pursuant to Rule 14a–6(b) no later than the date that it first sends the Notice to shareholders.[63]

b. 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.[64] The specified Web site may not be the Commission's EDGAR system.[65] 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.[66] The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.[67] The proxy materials must remain available on that Web site through the conclusion of the shareholder meeting.[68]

c. 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.[69] 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.

d. 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.[70]

e. 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.[71] 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.[72] 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.

[56] 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.

[57] See new Rule 14a–16(n)(4). Appropriate changes must be made if the issuer is providing an information statement pursuant to Regulation 14C, seeking to effect a corporate action by written consent, or is a legal entity other than a corporation.

[58] See new Rule 14a–16(n)(3)(ii).

[59] See new Rule 14a–16(n)(4)(ii).

[60] Rule 14a–16(g) [17 CFR 240.14a–16(g)].

[61] Rule 14a–16(e) [17 CFR 240.14a–16(e)].

[62] Rule 14a–16(e)(2)(ii) [17 CFR 240.14a–16(e)(2)(ii)].

[63] Rule 14a–16(i) [17 CFR 240.14a–16(i)]. If the issuer incorporates the contents of the Notice into the proxy materials, a separate filing is not required.

[64] Rule 14a–16(b)(1) [17 CFR 240.14a–16(b)(1)].

[65] Rule 14a–16(b)(3) [17 CFR 240.14a–16(b)(3)].

[66] Rule 14a–16(b)(2) [17 CFR 240.14a–16(b)(2)].

[67] Rule 14a–16(c) [17 CFR 240.14a–16(c)]. See Section II.A.3 of Release 34–55146 (Jan. 22, 2007) [72 FR 4148].

[68] Rule 14a–16(b)(1) [17 CFR 240.14a–16(b)(1)].

[69] Rule 14a–16(b)(4) [17 CFR 240.14a–16(b)(4)].

[70] See new Rule 14a–16(h)(2).

[71] Rule 14a–16(k)(1) [17 CFR 240.14a–16(k)(1)]. See Section II.A.1.b.iii of Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[72] Rule 14a–16(k)(2) [17 CFR 240.14a–16(k)(2)].

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 by Rule 14a–3(b),[73] and a proxy card; [74]
- An issuer need not prepare a separate Notice if the issuer incorporates all of the Notice information into the proxy statement and proxy card; [75]
- 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; [76]
- 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; [77]
- 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.[78]

a. 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.[79] 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 by Rule 14a–3(b), 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.[80]

b. 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.[81]

c. 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 deadline in Rule 14a–16 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. Six commenters on the proposal questioned whether the proposal would have required all issuers to prepare their proxy materials at least 40 days prior to the meeting.[82] We have clarified that an issuer must comply with the 40-day period *only* if it intends to comply with the notice only option.[83]

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.[84]

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.[85]

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.[86] 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.[87] Consistent

[73] The requirement in Exchange Act Rules 14a–3(b) and 14c–3(a) to furnish annual reports to security holders does not apply to registered investment companies [17 CFR 240.14a–3(b) and 240.14c–3(a)]. A soliciting person other than the issuer also is not subject to this requirement. Finally, an issuer is required to provide such a report for shareholder meetings at which directors are to be elected.

[74] See new Rule 14a–16(n)(1).

[75] See new Rule 14a–16(n)(2)(ii). See also footnote 58, above.

[76] See new Rule 14a–16(n)(3)(ii).

[77] See new Rule 14a–16(n)(3)(i).

[78] See new Rule 14a–16(n)(4).

[79] Rule 14a–16(f)(1) [17 CFR 240.14a–16(f)(1)]. 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. See new Rule 14a–16(h)(1).

[80] 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. See new Rule 14a–16(h)(2).

[81] See Rule 14a–16(n)(4).

[82] See, for example, letters from Chamber of Commerce, CII, Commerce Financial Printers, Elmore & Allen, ICI, and STA.

[83] See Rule 14a–16(n)(3)(i).

[84] 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. See Rule 14a–16(l)(2) [17 CFR 240.14a–16(l)(2)].

[85] See Rule 14b–1(b)(2) [17 CFR 240.14b–1(b)(2)].

[86] For a more complete discussion of the content of the intermediary's Notice, see Section II.B.2 of Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[87] That is, as in the case of an issuer, a soliciting person other than the issuer may solicit some

Continued

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.[88]

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.[89]

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.[90] 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.[91] 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.[92]

III. Clarifying Amendments

Since adopting the notice and access model as a voluntary model, we have received several questions regarding implementation of that model. Some of these questions were received as comments on the proposing release to these amendments. To the extent such comments relate to the previously adopted voluntary model, the Commission's staff is working with those commenters to provide guidance regarding implementation of those rules. However, several comments indicated aspects of the adopted rules that we believe would benefit from clarification in the regulatory text. To help clarify our intent, we are adopting the following technical amendments.

A. No Requirement To Provide Recommendations

Rule 14a–16(d)(3),[93] as it was initially adopted under the voluntary notice and access model, required the Notice to contain ''[a] clear and impartial identification of each separate matter intended to be acted on and the soliciting person's recommendation regarding those matters.'' Our intent with this provision was not to require an issuer or other soliciting person to have a recommendation for every matter. Therefore, we are revising this provision to clarify that an issuer or other a soliciting person must present its recommendation only if it chooses to make a recommendation on a particular matter to be acted upon by shareholders.

B. Deadline for Responding to Requests for Copies After the Meeting

We are also amending the requirements about the fulfillment of requests for paper or e-mail copies received after the conclusion of the meeting. The rules that we initially adopted as part of the voluntary notice and access model made no distinction in the fulfillment requirements based on whether the issuer received a request for a paper or e-mail copy before or after the meeting date. We did state in the adopting release for the voluntary notice and access model that the post-meeting fulfillment provision is intended to require issuers to provide a copy of the proxy statement for one year ''[j]ust as the proxy rules require issuers to undertake in their proxy statements or annual reports to shareholders to provide copies of annual reports on Form 10–K for the most recent fiscal year to requesting shareholders.'' [94] The rule relating to providing copies of the annual report on Form 10-ndash;K does not require the use of First Class mail or that the issuer respond within three business days.[95] After the meeting is concluded, we do not believe there is such an urgent need to provide copies of the proxy materials in a timely manner to impose such requirements. Therefore, we are revising Rule 14a–16(j)(3) [96] to clarify that, 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.

C. Item 4 of Schedule 14A

Item 4 of Schedule 14A [97] requires that an issuer or other soliciting person describe the methods used for soliciting proxies if not using the mails. Because the amendments require issuers and other soliciting persons to comply with Rule 14a–16 with respect to all proxy solicitations not related to business combination transactions, we are revising this item to clarify that issuers and other soliciting persons need not describe the notice and access model when they are using it to solicit proxies.

IV. Compliance Dates

Large accelerated filers, not including registered investment companies, must comply with the amendments with respect to solicitations commencing on or after January 1, 2008. Registered investment companies, soliciting persons other than the issuer, and issuers that are not large accelerated filers conducting proxy solicitations (1) may comply with the amendments for solicitations commencing on or after January 1, 2008 and (2) must comply with the notice and access model for solicitations commencing on or after January 1, 2009. For example, a soliciting person other than the issuer that is soliciting proxies with respect to a shareholder meeting of a large accelerated filer is not required to follow the notice and access model until January 1, 2009, even though the large accelerated filer would be required to follow the model. However, such a soliciting person may voluntarily follow the model.

As stated above, the primary concern of most commenters on the proposal was the Commission's aggressive

shareholders using the notice only option, while soliciting other shareholders using the full set delivery option.

[88] Under Rule 14a–7(a)(2) [17 CFR 240.14a–7(a)(2)], 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. For a more complete discussion of the interaction of the model with Rule 14a–7, see Section II.C.4 of Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[89] Rule 14a–16(l)(2) [17 CFR 240.14a–16(l)(2)].

[90] Rule 14a–16(l)(3)(i) [17 CFR 240.14a–16(l)(3)(i)].

[91] *Id.*

[92] Rule 14a–16(l)(3)(ii) [17 CFR 240.14a–16(l)(3)(ii)].

[93] 17 CFR 240.14a–16(d)(3).

[94] See Release No. 33–55146 (Jan. 22, 2007) [72 FR 4148].

[95] See Rule 14a–3(b) [17 CFR 240.14a–3(b)].

[96] 17 CFR 240.14a–16(j)(3).

[97] 17 CFR 240.14a–101.

timetable for adopting the proposed rules. All 14 commenters on this topic requested that the Commission delay adoption of the proposed rules.[98] This group of commenters included trade associations representing issuers, transfer agents, intermediaries, proxy distribution service providers, institutional investors, and other shareholders.

Eight of these commenters were concerned that the short period between effectiveness of the voluntary model and adoption of the amendments in this release would not permit the Commission and the industry to properly evaluate the results of the voluntary model and prepare an adequate cost-benefit analysis.[99] Data that the commenters felt would be important to capture regarding the voluntary model included: (1) The effect on voter participation; (2) the costs of implementing the model; and (3) the extent to which predicted savings are actually realized by companies and other soliciting persons. These commenters recommended that the Commission not adopt the proposed amendments until it has had the opportunity to assess the data received regarding companies' experiences with the voluntary model.

With respect to costs, three of these commenters were concerned regarding the cost of adopting rules that would require issuers to develop, or hire outside services to develop, an Internet voting platform.[100] The rules that we are adopting do not require, and the proposals would not have required, such an Internet voting platform. Similarly, five commenters raised concerns regarding the ability of issuers to prepare their proxy materials at least 40 days before the date of the shareholder meeting, and costs associated with these efforts.[101] The rules that we are adopting do not require, and the proposal would not have required, all issuers to comply with the 40-day deadline if they are unable, or choose not, to do so.

As we have explained above, an issuer or other soliciting person may elect to comply with either: (1) The notice only option which is identical to the voluntary notice and access model; or (2) the full set delivery option. The latter option is substantially the same as the traditional system of providing proxy materials in paper, except that an issuer or other soliciting person complying with the full set delivery option also will have to:

- Prepare and send a Notice, or incorporate the Notice information into its proxy statement and proxy card; and
- Post its proxy materials on a publicly accessible Web site.

As we discuss more fully in our cost-benefit analysis, we believe that the cost to issuers and other soliciting persons to comply with these two requirements will not be significant, and therefore are expanding Internet availability of proxy materials to all shareholders. Many of the commenters' concerns regarding costs were based on beliefs that the proposal would require an electronic voting platform, preparation of proxy materials at least 40 days before the shareholder meeting, and anonymity controls on the Web site that exceed what the proposal would actually require. As noted above, the proposals would not have required, and the final rules do not require, such provisions. Rather, an issuer or other soliciting person can substantially continue to follow the traditional method of proxy delivery with minimal changes. Because the amendments will not have a significant impact on the requirements placed on issuers and other soliciting persons, we believe it is appropriate to adopt them now.

We also note that commenters have expressed concern, particularly in relation to the voluntary model, that if the model has a negative effect on shareholder participation, issuers may use the model to disenfranchise certain shareholders. We recognize these concerns and intend to monitor shareholder participation and take any steps necessary to prevent such abuse.

Furthermore, the tiered compliance dates address commenters' concerns because they will allow the Commission to better analyze the impact of the rules on a subset of issuers constituting large accelerated filers.[102] As noted above, a review of existing Web sites of such issuers indicated that approximately 80% of them already post their filings, including proxy materials, on their Web site. Thus, most of the issuers that will be subject to the rules in the first year will be large issuers that appear to already post their proxy materials on their Web site. Therefore, we believe that this group is in the best position with respect to implementation costs in the first year while we evaluate the performance of the model. Adopting the amendments before the 2008 proxy season effectively creates a test group of issuers, enabling the Commission to study the performance of the model with a significant number of larger issuers and providing the Commission with an opportunity to make any necessary revisions to the rules before they apply to all issuers and other soliciting persons.

V. Paperwork Reduction Act

Certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''), including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. The titles for the collections of information are:

Regulation 14A (OMB Control No. 3235–0059)

Regulation 14C (OMB Control No. 3235–0057)

We requested public comment on these collections of information in the release proposing the notice and access model as a voluntary model for disseminating proxy materials,[103] and submitted them to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. We received approval for the collections of information. We submitted a revised PRA analysis to OMB in conjunction with the release adopting the notice and access model as a voluntary model.[104] In those releases, we assumed conservatively that all issuers and other persons soliciting proxies would follow the voluntary model because the proportion of issuers and other soliciting persons that would elect to follow the model was uncertain.

The rules that we are adopting require all issuers and other soliciting persons to follow the notice and access model, including the preparation of the Notice, as we assumed for our prior PRA analysis. Therefore, we estimate that the rule amendments will not impose any new recordkeeping or information collection requirements beyond those described in the release adopting the

[98] See letters from AARP, ABC, ADP, BONY, Chamber of Commerce, CII, Computershare, ICI, Reed Smith, Registrar and Transfer, SCSGP, SIFMA, SSA, and STA.

[99] See letters from Chamber of Commerce, BONY, ICI, Reed Smith, Registrar and Transfer, SCSGP, SIMFA, and STA.

[100] See letters from ABC, BONY and Registrar and Transfer.

[101] See letters from Chamber of Commerce, CII, Commerce Financial Printers, Elmore & Allen, ICI, and STA.

[102] One commenter specifically noted that the timeframe would not allow the Commission to analyze the effects of one full year of compliance for large accelerated filers who chose to accept the voluntary model. See letter from the Chamber of Commerce. The tiered system will allow the Commission to analyze a full year of experience under the notice and access model for all large accelerated filers.

[103] Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

[104] Release No. 34–55146 (Jan. 22, 2007) [72 FR 4147].

voluntary model, or necessitate revising the burden estimates for any existing collections of information requiring OMB's approval.

VI. Cost-Benefit Analysis

A. Background

We are adopting amendments to the proxy rules under the Exchange Act substantially as proposed that require issuers and other soliciting persons (jointly referred to as ''soliciting parties'') to follow the notice and access model for furnishing proxy materials. The amendments are intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications.

B. Summary of the Amendments

The notice and access model that we are adopting requires soliciting parties to furnish proxy materials by posting them on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access them. Under the model, soliciting parties may choose between two options with respect to how they will provide proxy materials to shareholders. Under the first option, the notice only option, a soliciting party may follow the procedures in Exchange Act Rule 14a–16 that we adopted on January 22, 2007 in connection with the voluntary model.[105] Under this option, a soliciting party would send only a Notice indicating the Internet availability of the proxy materials to a solicited shareholder at least 40 days prior to the shareholders meeting and provide that shareholder with a paper or e-mail copy of the proxy materials upon request.

Under the second option, the full set delivery option, soliciting parties may follow procedures substantially similar to the traditional method of sending paper copies of the proxy materials to a shareholder by accompanying the Notice with a full set of proxy materials. Under the full set delivery option, the soliciting party is not required to send the Notice and the full set of proxy materials at least 40 days prior to the shareholders meeting and need not provide a means for shareholders to request another set of the proxy materials. Moreover, a soliciting party need not prepare a separate Notice if it includes all of the information otherwise required in a Notice in the proxy statement or proxy card.

A soliciting party 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. The amendments also require intermediaries to follow similar procedures to provide beneficial owners with access to the proxy materials. Soliciting parties may not use the model with respect to a business combination transaction.

C. Benefits

1. Versatility of the Internet

Historically, soliciting parties decided whether to provide shareholders with the choice to receive proxy materials by electronic means. The amendments, which build on and incorporate the voluntary model that we adopted in January, are intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet potentially to lower the costs of proxy solicitations, and to improve the efficiency of the proxy process and shareholder communications. The amendments provide all shareholders with the ability to choose whether to access proxy materials in paper, by e-mail or via the Internet. As technology continues to progress, accessing the proxy materials on the Internet should increase the utility of our disclosure requirements to shareholders. Information in electronic documents is often more easily searchable than information in paper documents. Shareholders will be better able to go directly to any section of the document that they are particularly interested in. The amendments also will permit shareholders to more easily evaluate data and transfer data using analytical tools such as spreadsheet programs. Such tools enable users to compare relevant data about several companies more easily.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may encourage improved shareholder communications in other ways. Current and future Internet communications innovations may enhance shareholders' ability to interact not only with management, but with each other. Such access may improve shareholder relations to the extent that shareholders feel that they have enhanced access to management. Centralizing an issuer's disclosure on a Web site may facilitate shareholder access to other important information, such as research reports and news concerning the issuer. We believe that increased reliance on the Internet for making proxy materials available to shareholders could ultimately lower the cost of soliciting proxies for all soliciting parties.

2. Reduction in Paper Processing Costs

One of the purposes of the voluntary model was to reduce paper processing costs related to proxy solicitations. We previously estimated savings assuming that soliciting parties responsible for 10% to 50% of all proxy mailings would follow that model. We do not assume that the amendments will cause a soliciting party to change its decision under the voluntary model whether to send only a Notice or to send a full set of proxy materials to shareholders. Therefore, we do not assume for this analysis any savings in paper processing costs as a result of these particular amendments. However, because the voluntary model just recently became effective for proxy solicitations commencing on or after July 1, 2007, and therefore has not been used by many soliciting parties and because these amendments create a single notice and access model that includes aspects of the voluntary model, we are presenting a cost-benefit analysis that addresses the notice and access model as a whole, including our assessment of the benefits and costs created by the amendments.

As we discussed in the adopting release for the voluntary model, the paper-related benefits of the notice and access model are limited by the volume of paper processing that would occur otherwise. As we noted in that release, Automatic Data Processing, Inc.[106] (ADP) handles the vast majority of proxy mailings to beneficial owners.[107] ADP publishes statistics that provide useful background for evaluating the likely consequences of the rule amendments. ADP estimates that, during the 2006 proxy season,[108] over 69.7 million proxy material mailings were eliminated through a variety of means, including householding and existing electronic delivery methods. During that season, ADP mailed 85.3 million paper proxy items to beneficial owners. ADP estimates that the average cost of printing and mailing a paper copy of a set of proxy materials during

[105] Release No. 34–55146 (Jan. 22, 2007) [72 FR 4147].

[106] ADP recently spun off its brokerage services group, which is now called Broadridge Financial Solutions, Inc. However, because its comment letter was submitted when the group was part of ADP and carries the ADP letterhead, we continue to refer to the company as ADP for purposes of this release.

[107] We expect savings per mailing to record holders to roughly correspond to savings per mailing to beneficial owners.

[108] According to ADP data, the 2006 proxy season extended from February 15, 2006 to May 1, 2006.

the 2006 proxy season was $5.64. We estimate that soliciting parties spent, in the aggregate, $481.2 million in postage and printing fees alone to distribute paper proxy materials to beneficial owners during the 2006 proxy season.[109] Approximately 50% of all proxy pieces mailed by ADP in 2005 were mailed during the proxy season.[110] Therefore, extrapolating this percentage to 2006, we estimate that soliciting parties from beneficial owners spent approximately $962.4 million in 2006 in printing and mailing costs.[111]

As was the case with the voluntary model, for soliciting parties following the notice only option, paper-related savings may be reduced by the cost of fulfilling requests for paper copies.[112] We estimate that approximately 19% of shareholders would request paper copies from such soliciting parties. Commenters on the voluntary model provided alternate estimates. For example, Computershare, a large transfer agent, estimated that less than 10% of shareholders would request paper copies.[113] According to a survey conducted by Forrester Research for ADP, 12% of shareholders report that they would always take extra steps to get their proxy materials, and as many as 68% of shareholders report that they would take extra steps to get their proxy materials in paper at least some of the time. The same survey also finds that 82% of shareholders report that they look at their proxy materials at least some of the time. These survey results suggest that shareholders may review proxy materials even if they do not vote. During the 2005 proxy season, only 44% of accounts were voted by beneficial owners. Put differently, 56%, or 84.8 million accounts, did not return requests for voting instructions. Our estimate that 19% of shareholders would request paper copies reflects the diverse estimates suggested by the available data.

Based on the assumption that 19% of shareholders would choose to have paper copies sent to them when a soliciting party initially sends them only a Notice, we estimated that the voluntary model could produce annual paper-related savings ranging from $48.3 million (if soliciting parties responsible for 10% of all proxy mailings choose to follow the notice only option) to $241.4 million (if soliciting parties responsible for 50% of all proxy mailings choose to follow the notice only option).[114] This estimate excludes the effect of the provision of the amendments that would allow shareholders to make a permanent request for paper copies. That provision enables soliciting parties to take advantage of bulk printing and mailing rates for those requesting shareholders, and therefore should reduce the on-demand costs reflected in these calculations.

Although we expect the savings to be significant from the notice and access model as a whole, the actual paper-related benefits will be influenced by several factors that we estimate should become less important over time. First, to the extent that shareholders request paper copies of the proxy materials, the benefits of the notice and access model in terms of savings in printing and mailing costs will be reduced. Soliciting parties have expressed concern that the cost per paper copy would be significantly greater if they have to mail copies of paper proxy materials to shareholders on an on-demand basis, rather than mailing the paper copies in bulk. Thus, if a significant number of shareholders request paper, the savings will be substantially reduced. Second, soliciting parties may face a high degree of uncertainty about the number of requests that they may get for paper proxy materials and may maintain unnecessarily large inventories of paper copies as a precaution. As soliciting parties gain experience with the number of sets of paper materials that they need to supply to requesting shareholders, and as shareholders become more comfortable with receiving disclosures via the Internet, the number of paper copies are likely to decline, as would soliciting parties' tendency to print many more copies than ultimately are requested. This should lead to growth in paper-related savings from the notice and access model over time.

3. Reduction in the Cost of Proxy Contests

Benefits would accrue under the notice and access model from additional reductions in the costs of proxy solicitations by persons other than the issuer. Soliciting persons other than the issuer also must comply with the notice and access model, but can limit the scope of their proxy solicitations to shareholders who have not requested paper copies of the proxy materials. The flexibility afforded to persons other than the issuer under the model ultimately may reduce the cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a source of discipline in the corporate governance process. However, because the amendments do not significantly change the options available to such soliciting person from the existing rules, we do not anticipate that the amendments will change significantly the number of soliciting persons other than issuers who select the notice only option as opposed to the number who would have chosen to follow the voluntary model.

The effect of the notice and access model of lessening the costs associated with a proxy contest will be limited by the persistence of other costs. One commenter on the proposal to create the voluntary model noted that a large percentage of the costs of effecting a proxy contest go to legal, document preparation, and solicitation fees, while a much smaller percentage of the costs is associated with printing and distribution of materials.[115] However, other commenters suggested that the paper-related cost savings that can be realized from the rule amendments are

[109] 85.3 million mailings × $5.64/mailing = $481.2 million.

[110] According to ADP, in 2005, 90,013,175 proxy pieces out of a total 179,833,774 proxy pieces were mailed during the 2005 proxy season. Thus, we estimate that 50% of proxy pieces are mailed during the proxy season (90,013,175 proxy pieces during the season/179,833,774 total proxy pieces = 0.5 or 50%).

[111] $481.2 million/50% = $962.4 million.

[112] Soliciting parties that choose to follow the full set delivery option will not incur fulfillment costs. Such soliciting parties are not required to provide paper copies to shareholders upon request because they would have provided such copies at the outset.

[113] See letter commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from Computershare.

[114] This range of potential cost savings depends on data on proxy material production, home printing costs, and first-class postage rates provided by Lexecon and ADP, and supplemented with modest 2006 USPS postage rate discounts. The fixed costs of notice and proxy material production are estimated to be $2.36 per shareholder, including $0.42 to print and mail the Notice. The variable costs of fulfilling a paper request, including handling, paper, printing and postage, are estimated to be $6.11 per copy requested. Our estimate of the total number of shareholders is based on data provided by ADP and SIFMA (at the time it submitted these comments, the SIFMA was known as the Securities Industry Association or SIA). According to SIFMA's comment letter on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598], 78.49% of shareholders held their shares in street name. We estimate that the total number of proxy pieces mailed to both registered holders and beneficial owners is approximately 229,116,797 (179,833,774 proxy pieces to beneficial owners/78.49% = 229,116,799 total proxy pieces). To calculate the potential cost savings, for the percentage of proxy piece mailings replaced by the Notice (10% or 50% times 229,116,799 proxy pieces), we estimate the total savings of not printing and sending full sets ($5.64) and subtract the estimated costs of printing and sending Notices and fulfilling paper requests ($2.36 + (19.2% × $6.11)). 10% × 229,116,799 proxy pieces × ($5.64 − ($2.36 + (19.2% × $6.11)) = $48.3 million. 50% × 229,116,799 proxy pieces × ($5.64 − ($2.36 + (19.2% × $6.11)) = $241.4 million.

[115] See letter commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from ADP.

substantial enough to change the way many contests are conducted.[116]

4. Environmental Benefits

Finally, some benefits from the notice and access model, as revised, may arise from a reduction in what may be regarded as the environmental costs of the proxy solicitation process.[117] Specifically, proxy solicitation involves the use of a significant amount of paper and printing ink. Paper production and distribution can adversely affect the environment, due to the use of trees, fossil fuels, chemicals such as bleaching agents, printing ink (which contains toxic metals), and cleanup washes. Although not all of these costs may be internalized by paper producers, to the extent that such producers do internalize these costs and the costs are reflected in the price of paper and other materials consumed during the proxy solicitation process, our dollar estimates of the paper-related benefits reflect the elimination of these adverse environmental consequences under the model.

D. Costs

The amendments require all soliciting parties, including those who follow the full set delivery option, to (1) prepare and print a Notice (or incorporate Notice information into its proxy statement and proxy card) and (2) post the proxy materials on an Internet Web site. Because the notice only option is identical to the voluntary model, soliciting parties that choose that option will incur the same costs and savings as they would have under the voluntary model.

1. Costs Under the Notice Only Option

A soliciting party that chooses to follow the notice only option would incur the same costs as a soliciting party that chose to follow the voluntary model. These costs include the following: (1) The cost of preparing, producing, and sending the Notice to shareholders; (2) the cost of posting proxy materials on an Internet Web site; (3) providing a means to execute a proxy as of the date that the Notice is sent; and (4) the cost of processing shareholders' requests for copies of the proxy materials and maintaining their permanent election preferences if a soliciting party elects to follow the notice only option.

Under the amendments, soliciting parties must prepare and print the Notice to shareholders and post their proxy materials on an Internet Web site. As noted above, these costs would apply to soliciting parties irrespective of which option they choose. A soliciting party following the notice only option also must separately send the Notice to shareholders. As we stated in the release adopting the voluntary model, the paper-related savings to soliciting parties discussed under the benefits section above are adjusted for the cost of preparing, printing and sending Notices.

In the release adopting the voluntary model, we assumed, for purposes of the PRA, that all soliciting parties would elect to follow the procedures, resulting in a total estimated cost to prepare the Notice of approximately $2,020,475.[118] We are adjusting this amount to $2,469,475 to reflect a change in the basis of our cost estimate for personnel time.[119] Based on the percentage range of soliciting parties that we estimated would adopt the voluntary model, we estimated that these costs for soliciting parties who follow the notice only option could range between $246,948 (if soliciting parties responsible for 10% of all proxy mailings followed the notice only option) and $1,234,736 (if soliciting parties responsible for 50% of all proxy mailings followed the notice only option).[120]

If Notices are sent by mail, then the mailing costs may vary widely among parties. Postage rates likely would vary from $0.14 to $0.41 per Notice mailed, depending on numerous factors. In our estimates of the paper-related benefits above, we assume that each Notice costs a total of $0.13 to print and $0.29 to mail. Based on data from ADP and SIA, we estimate that soliciting parties send a total of 229,116,797 proxy pieces per year.[121] In the release adopting the voluntary model, we assumed that only those soliciting parties that choose to follow the voluntary model would incur these printing and mailing costs. We estimated that the costs to print the Notices would range from $9.6 million (if soliciting parties responsible for 10% of all current proxy mailings choose to follow the notice only option) and $48.1 million (if soliciting parties responsible for 50% of current proxy mailings choose to follow the notice only option).[122] These same costs would be incurred by soliciting parties following the notice only option under the revised model.

Soliciting parties that follow the notice only option must post their proxy materials on an Internet Web site. Although costs for establishing a Web site and posting materials on it can vary greatly, the rules do not require elaborate Web site design. The rules only require that a soliciting party obtain a Web site and post several documents on that Web site. Several companies currently provide Web hosting services for free, including significant memory to post the required documents and bandwidth to handle several thousand ''hits'' per month.[123] We also noted that several Web hosting services provided Web sites which would handle up to five million hits per month are available for approximately $5 to $8 per month, or $60 to $96 per year.[124] Based on a review of several Internet Web page design firms, we estimate that the cost of designing a

[116] See letters commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from CALSTRS, Computershare, ISS, and Swingvote.

[117] See letter commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from American Forests.

[118] In the voluntary model adopting release, we estimated that soliciting parties would spend a total of $897,975 on outside professionals to prepare this disclosure. We also estimated that soliciting parties would spend a total of 8,980 hours of personnel time preparing this disclosure. We estimated the average hourly cost of personnel time to be $125, resulting in a total cost of $1,122,500 for personnel time and a total cost of $2,020,475 ($1,122,500 + $897,975 = $2,020,475).

[119] We are adjusting this estimate of personnel time to be $175 to be consistent with our other releases. This results in an in-house cost of $1,571,500 (8,980 hours × $175/hour = $1,571,500) and a total cost of $2,469,475 ($1,571,500 + $897,975 = $2,469,475) for soliciting parties following the notice only option. For purposes of the PRA analysis, we are not adjusting the hourly burden imposed on soliciting parties and, therefore, are not revising our PRA submission.

[120] $2,469,475 * 10% = $246,948. $2,469,475 * 50% = $1,234,736.

[121] See *http://www.ics.adp.com/release11/public_site/about/stats.html* stating that ADP handled 179,833,774 in fiscal year 2005 and letter commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from SIFMA stating that beneficial accounts represent 78.49% of total accounts.

[122] 10% × 229,116,797 × ($0.13 + $0.29) = $9.6 million. 50% × 229,116,797 × ($0.13 + $0.29) = $48.1 million. As stated above, these costs would be significantly offset by savings as a result of not being required to print and mail full sets of proxy materials, resulting in a net savings of $48.3 million (if issuers responsible for 10% of all proxy mailings choose to follow the notice only option) to $241.4 million (if issuers responsible for 50% of all proxy mailings choose to follow the notice only option) for issuers choosing to follow the notice only option.

[123] A review found free Web hosting services that permit the posting of up to 100M of data, with a bandwidth capacity of 10,000MB. A document's size can vary dramatically depending on its design. Typical proxy statement and annual report sizes vary from 200KB for documents with few graphics such as an annual report on Form 10-K to 5MB for elaborate ''glossy'' annual reports. Based on this range of sizes, we estimate that a free Web hosting service would enable between 1,000 and 25,000 ''hits'' per month.

[124] We found several services which permit the posting of up to 300GB of data, with a bandwidth capacity of 3000GB, and include Web design programs at prices between $5 and $8 per month.

Web site that meets the basic requirements of the notice and access model would be approximately $300. Thus, we estimate that the approximate total cost to establish a new Web site would be approximately $360 per year for a soliciting party, or a range of $0.3 million (if soliciting parties responsible for 10% of all proxy mailings would not have followed the voluntary model) to $1.4 million (if soliciting parties responsible for 50% of all proxy mailings would not have followed the voluntary model).[125] This estimate assumes that the soliciting party obtains a new Web site to post the proxy materials. We believe that the cost to soliciting parties that already maintain Web sites would be less.

The Web site on which the proxy materials are posted must maintain the anonymity of shareholders accessing the site. As discussed elsewhere in the release, this requirement requires a soliciting party to refrain from installing software on the Web site that tracks the identity of persons accessing the Web site. Thus, this requirement does not impose any added burden on soliciting party establishing new Web sites. A soliciting party that already has a Web site must segregate a portion of that Web site so that any tracking software on its general Web site does not track persons accessing the portion containing the proxy materials. Such segregation of the Web site requires minimal effort and should not impose a significant burden on such parties.

The rules also require that the proxy materials be posted in a format or formats convenient for printing on paper or viewing online. One commenter was concerned that this would impose an unnecessary burden on soliciting parties. Currently, Internet Web sites regularly present the same document in multiple formats for the convenience of readers. In particular, Internet Web sites regularly post large files for Internet users with broadband connections and smaller files for users who do not have broadband connections. In light of this common practice on the Internet, we do not believe that this requirement will impose a significant burden on soliciting parties.

Soliciting parties must provide a means to vote as of the date on which the Notice is first sent. Those following the notice only option can do so by creating an electronic voting platform, providing a telephone number or posting a printable proxy card on the Web site. Some commenters questioned whether the model would require the creation of an electronic voting platform, which they estimated would cost approximately $3,000.[126] The amendments do not require such a voting platform. A soliciting party may simply post a printable proxy card or a telephone number for executing a proxy on its Web site, which should impose little burden.

The cost of processing shareholders' requests for copies of the proxy materials if a soliciting party elects to follow the notice only option is addressed as an offset to the savings discussed in the Benefits section of this analysis.

The amendments also require issuers and intermediaries to maintain records of shareholders who have requested paper and e-mail copies for future proxy solicitations. We estimate that this total cost if all issuers followed the notice only option would be approximately $13,098,500.[127] Thus, we estimated the cost due to the voluntary model would be approximately $1.3 million (if issuers responsible for 10% of all proxy mailings followed the notice only option) and $6.5 million (if issuers responsible for 50% of all proxy mailings followed the notice only option).[128]

2. Costs Under the Full Set Delivery Option

A soliciting party following the full set delivery option must either prepare a Notice or incorporate the Notice information into its proxy statement or proxy card. We base our estimates on preparing a separate Notice because we believe this would involve a greater cost. However, we anticipate that a significant number of soliciting parties would choose to incorporate the information into their materials. Based on the range that we estimated for soliciting parties following the notice only option, we estimate that soliciting parties responsible for 50% to 90% of all proxy mailings would choose to follow the full set delivery option. Soliciting parties who follow this option would not incur mailing costs in addition to costs incurred under the traditional system because the Notice would be included in the much larger package of the full set of proxy materials.

When the Commission adopted the voluntary model, we estimated that soliciting parties responsible for 10% to 50% of all proxy mailings would rely on the voluntary model. Under the amendments, we assume that soliciting parties that we estimated would not have followed the voluntary model (i.e., soliciting parties responsible for 50% to 90% of all proxy mailings) would incur the cost of preparing and printing a Notice (or incorporating Notice information into their proxy materials) [129] and posting the proxy materials on an Internet Web site.

We estimate that the cost for soliciting parties that would not have followed the voluntary model to prepare a Notice will range between $1.2 million (if soliciting parties responsible for 50% of all proxy mailings would not have followed the voluntary model) and $2.2 million (if soliciting parties responsible for 90% of all proxy mailings would not have followed the voluntary model).[130]

Similarly, we estimate that the cost for such parties of printing the Notice will range between $14.9 million [131] (if soliciting parties responsible for 50% of all proxy mailings would not have followed the voluntary model) and $26.8 million [132] (if soliciting parties responsible for 90% of all proxy mailings would not have followed the voluntary model). Soliciting parties can significantly reduce this cost to print the Notice by incorporating the Notice information into the proxy materials instead of printing a separate Notice. Printing costs for the full set of proxy materials would be identical to such costs under the traditional method of providing proxy materials by mail and therefore do not represent an incremental cost increase as a result of these rules.

We do not expect an incremental increase in mailing cost for the Notice for soliciting parties that choose the full

[125] Based on filings in our last fiscal year, we estimate 7,982 proxy solicitations per year. 10% × 7,982 × $360 = $0.3 million. 50% × 7,982 × $360 = $1.4 million.

[126] See letters from BONY and Registrar and Transfer.

[127] In the voluntary model adopting release, we estimated, for PRA purposes, that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimate the average hourly cost of issuer and intermediary personnel time to be $175, resulting in a total cost of $13,068,500 for issuer and intermediary personnel time.

[128] $13,098,500 × 10% = $1,309,850* $13,098,500 * 50% = $6,549,250.

[129] We do not expect an incremental increase in mailing cost for the Notice for soliciting parties that choose the full set delivery option because the Notice is substantially smaller than the full set of proxy materials currently sent under the traditional system and must accompany that full set (or be incorporated into those materials).

[130] As noted above, we calculated a total cost of $2,469,475 for preparing the Notice for purposes of the PRA. $2,469,475 * 50% = $1,234,736. $2,469,475 * 90% = $2,222,528.

[131] 50% × 229,116,797 × $0.13 = $14.9 million.

[132] 90% × 229,116,797 × $0.13 = $26.8 million. We assume that the additional cost of mailing the Notice together with the full set of proxy materials is negligible.

set delivery option because the Notice is substantially smaller than the full set of proxy materials currently sent under the traditional system and must accompany that full set (or be incorporated into the proxy statement and proxy card).

In addition, under the amendments, soliciting parties that would not have followed the voluntary model must post their proxy materials on an Internet Web site. As we noted above, although costs for establishing a Web site and posting materials on it can vary greatly, the rules do not require elaborate Web site design. The rules only require that a soliciting party obtain a Web site and post several documents on that Web site. As with the notice only option, we estimate that the approximate total cost to establish a new Web site would be approximately $360 per year for a soliciting party, or a range of $1.4 million (if soliciting parties responsible for 50% of all proxy mailings would not have followed the voluntary model) to $2.6 million (if soliciting parties responsible for 90% of all proxy mailings would not have followed the voluntary model).[133]

3. Costs to Intermediaries

Soliciting parties and intermediaries will incur additional processing costs under the notice and access model. The amendments require an intermediary such as a bank, broker-dealer, or other association to follow the notice and access model with respect to all issuers. An intermediary must prepare its own Notice to beneficial owners, along with instructions on when and how to request paper copies and the Web site where the beneficial owner can access his or her request for voting instructions. Since soliciting parties reimburse intermediaries for their reasonable expenses of forwarding proxy materials and intermediaries and their agents already have systems to prepare and deliver requests for voting instructions, we do not expect the involvement of intermediaries in sending their Notices to significantly affect the costs associated with the rules.

Under the notice and access model, a beneficial owner desiring a copy of the proxy materials from a soliciting party following the notice only option must request such a copy from its intermediary. The costs of collecting and processing requests from beneficial owners may be significant, particularly if the intermediary receives the requests of beneficial owners associated with many different soliciting parties that specify different methods of furnishing the proxy. We expect that these processing costs will be highest in the first year after adoption but will subsequently decline as intermediaries develop the necessary systems and procedures and as beneficial owners increasingly become comfortable with accessing proxy materials online. In addition, the amendments permit a beneficial owner to specify its preference on an account-wide basis, which should reduce the cost of processing requests for copies. These costs ultimately are paid by the soliciting party.

4. Costs to Shareholders

Under the amendments, a shareholder can avoid any additional cost by accessing the proxy materials on the Internet if they already have Internet access or by requesting copies of the proxy materials from the soliciting parties if the shareholder is a record holder or the intermediary if the shareholder is a beneficial owner. Shareholders who do not already have Internet access and wish to access the proxy materials online would incur any necessary costs associated with gaining access to the Internet. In addition, some shareholders may choose to print out the posted materials, which would entail paper and printing costs. We estimate that approximately 10% of all shareholders receiving a Notice under the notice only option would print out the posted materials at home at an estimated cost of $7.05 per proxy package. Based on these assumptions, we estimated that the voluntary model could produce incremental annual home printing costs ranging from $16 million (if soliciting parties responsible for 10% of all current proxy mailings follow the notice only option) to $80 million (if soliciting parties responsible for 50% of all current proxy mailings follow the notice only option).[134] Shareholders of issuers that follow the full set delivery option would not incur such costs.

5. Comments Regarding Unanticipated Costs

Several commenters expressed concern with the adoption of these amendments before the Commission has collected operating data from the voluntary model. The recommended delaying adoption until the market has had more experience with the voluntary model before requiring companies to follow the notice and access model. As we note elsewhere in the release, the amendments adopted in this release do not require soliciting parties to follow procedures substantially different from the procedures available under the voluntary model. Soliciting parties who wish to furnish their proxy materials via traditional paper delivery may continue to do so, with the only added requirements being that they must post their proxy materials on an Internet Web site and prepare a Notice (or incorporate the Notice information into their proxy statement and proxy card).

In addition, only large accelerated filers that are subject to the proxy rules will be subject to the requirements in 2008. All other filers need not, but may, follow the notice and access model before January 1, 2009. Most large accelerated filers already appear to post their proxy materials on the Internet. As noted above, a review of existing Web sites of such issuers indicated that approximately 80% of them already post their filings, including proxy materials, on their Web site. Thus, most of the issuers that will be subject to the rules in the first year will be large issuers that already post their proxy materials on their Web site. Therefore, we believe that no company will incur significant cost as a result of these amendments in the first year, while we evaluate the performance of the model. Although they may need to implement some procedures to ensure the anonymity of persons accessing those materials, we do not believe this requirement will impose a significant burden on these companies.

Furthermore, the tiered compliance dates address commenters' concerns because they will allow the Commission to better analyze the impact of the rules on a subset of issuers constituting large accelerated filers.[135] Adopting the amendments for large accelerated filers before the 2008 proxy season effectively

[133] 50% × 7,982 × $360 = $1.4 million. 90% × 7,982 × $360 = $2.6 million.

[134] This range of potential home printing costs depends on data provided by Lexecon and ADP. See letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing cost, we assume that 50% of annual report pages are printed in color and 100% of proxy statement pages are printed in black and white. The estimated percentage of shareholders printing at home is derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Total number of shareholders estimated as above based on data provided by ADP and SIFMA. See letters commenting on Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] from ADP and SIFMA.

[135] One commenter specifically noted that the timeframe would not allow the Commission to analyze the effects of one full year of compliance for large accelerated filers who chose to accept the voluntary model. See letter from the Chamber of Commerce. The tiered system will allow the Commission to analyze a full year of experience under the notice and access model for all large accelerated filers.

creates a test group of issuers, enabling the Commission to study the performance of the model with a significant number of larger issuers and to make any necessary revisions to the rules before they apply to all issuers and other soliciting persons.

6. Comment on the Complexity of the Notice and Access Model

One commenter expressed concern that the proposed rule would make the proxy delivery system too complex for beneficial owners holding in street name through their brokers or other intermediaries.[136] We acknowledge that the amendments provide shareholders with more options with respect to the manner in which they are able to access their proxy materials, and thereby add complexity to the proxy distribution system. However, we believe that shareholder choice as to the means by which they access proxy materials and the expanded use of the Internet to provide such information to shareholders ultimately will provide shareholders with better access to information, which we believe can make the proxy process more efficient. In adopting the voluntary model, we created a provision that allows a shareholder to make a one-time election of the means by which they access proxy materials to simplify the model for those shareholders. In addition, by choosing to follow the full set delivery option, issuers and other soliciting persons wishing to do so can continue to furnish their proxy materials through procedures substantially similar to traditional methods of furnishing proxy materials. These provisions should significantly simplify the process for all shareholders.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[137] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[138] and Section 2(c) of the Investment Company Act of 1940[139] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The amendments require all issuers and other soliciting persons to follow the notice and access model for all proxy solicitations, other than those associated with business combination transactions. The amendments are intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet to lower the costs of proxy solicitations, and to improve shareholder communications. Historically, issuers decided whether to provide shareholders with the choice to receive proxy materials by electronic means. The amendments provide all shareholders with the ability to choose whether to access proxy materials in paper, by e-mail or via the Internet. We believe that expanded use of electronic communications to replace current modes of disclosures on paper and physical mailings will increase the efficiency of the shareholder communications process. Use of the Internet permits technology developers to enhance a shareholder's experience with respect to such communications. It permits interactive communications at real-time speeds. Improved shareholder communications may improve relationships between shareholders and management. Retail investors may have easier access to management. In turn, this may lead to increased confidence and trust in well-managed, responsive issuers.

The amendment may have the effect of initially raising costs on issuers and other soliciting persons by requiring persons who choose to follow the full set delivery option to post the proxy materials on a Web site and prepare a Notice (or incorporate Notice information into their proxy statement and proxy card). Commenters were concerned that the amendments may create other inefficiencies such as reducing shareholder voting participation and increased reliance on broker discretionary voting. The amendments do not significantly differ from the voluntary model. Issuers who are concerned about a reduction in voting participation still have the option to send a full set of proxy materials to all shareholders. Therefore, we do not believe that the amendments will have a significant impact compared to the previously-adopted voluntary model on shareholder voting participation, and hence reliance on broker discretionary voting.

We also considered the effect of the amendments on competition and capital formation, including the effect that the amendments may have on industries servicing the proxy soliciting process. We do not anticipate any significant effects on capital formation. We also anticipate that some companies whose business model is based on the dissemination of paper-based proxy materials may experience some adverse competition effects from the amendments. However, the full set delivery option permits companies to continue to send paper copies to shareholders. Thus, we do not anticipate that the amendments will have an incremental impact on this industry different from the voluntary model. The amendments may also promote competition among Internet-based information services.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to amendments to the rules and forms under the Exchange Act that require issuers, other persons soliciting proxies, and intermediaries to follow the notice and access model for all proxy solicitations except for those associated with a business combination transaction. An Initial Regulatory Flexibility Analysis (IRFA) was prepared in accordance with the Regulatory Flexibility Act in conjunction with the proposing release. The proposing release included, and solicited comment on, the IRFA.

A. Need for the Amendments

On January 22, 2007, we proposed amendments to the rules regarding provision of proxy materials to shareholders. We are adopting those amendments, substantially as proposed. Specifically, the amendments require issuers and other persons soliciting proxies to provide shareholders with Internet access to proxy materials. The amendments are intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. We anticipate that the model will enhance the ability of investors to make informed decisions and ultimately to lower the costs of proxy solicitations.

[136] See letter from Reed Smith. We received similar comments on our proposals to adopt the notice and access model as a voluntary means of furnishing proxy materials.

[137] 15 U.S.C. 78w(a)(2).

[138] 15 U.S.C. 78c(f).

[139] 15 U.S.C. 80a–2(c).

The amendments also will provide all shareholders with the ability to choose whether to access proxy materials in paper, by e-mail or via the Internet. Developing technologies on the Internet should expand the ways in which required disclosures can be used by shareholders. Electronic documents are more easily searchable than paper documents. Users are better able to go directly to any section of the document that they believe to be the most important. They also permit users to more easily evaluate data. It enables users to more easily download data into spreadsheet or other analytical programs so that they can perform their own analyses more efficiently. A centralized Web site containing proxy-related disclosure may facilitate shareholder access to other relevant information such as research reports and news about the issuer.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may have the side-effect of improving shareholder communications in other ways. Internet tools may enhance shareholders' ability to communicate not only with management, but with each other. Such direct access may improve shareholder relations to the extent shareholders have improved access to management.

B. Significant Issues Raised by Public Comment

Five commenters were concerned that smaller firms may not realize the savings contemplated by the mandatory model and may even incur increased costs.[140] One commenter suggested that the Commission develop ''ways to 'scale' the notice and access model for smaller public companies so as to reduce the cost of compliance,'' but did not provide any recommendations on how to do so.[141]

Several commenters were concerned about the increased set-up costs for issuers, including small entities. One commenter estimated that, based on its ''back-of-envelope'' estimate, the cost of outsourcing the requirements to a third party provider could cost companies over $5,000 and may exceed $10,000, including the establishment of an Internet voting platform.[142] Three other commenters estimated that the proposal would cost companies approximately $3,000 to establish such an Internet voting platform.[143] However, as noted previously, the amendments do not require companies to establish such a platform.[144] One of these commenters noted that although posting the proxy materials on the Internet is not necessarily expensive or difficult, outsourcing this function to an outside firm could cost hundreds, if not thousands, of dollars to do so.[145]

One commenter was concerned that the prohibition on ''cookies'' raises the costs for maintaining the Web sites.[146] Although this prohibition does raise the cost to maintain the Web sites, we believe that eliminating this prohibition may have a negative effect on shareholders' willingness to access the proxy materials via an Internet Web site. We do not believe this requirement will create undue burden on companies. Soliciting parties must refrain from installing cookies and other tracking features on the Web site or portion of the Web site where the proxy materials are posted. This may require segregating those pages from the rest of the soliciting party's regular Web site or creating a new Web site. However, the rules do 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 a soliciting party with sufficient information to identify the accessing shareholder, soliciting parties may not use these numbers to attempt to find out more information about persons accessing the Web site.

C. Small Entities Subject to the Amendments

The amendments affect issuers that are small entities. Exchange Act Rule 0–10(a)[147] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 public companies, other than investment companies, that may be considered small entities.[148]

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[149] Approximately 164 registered investment companies meet this definition. Moreover, approximately 51 business development companies may be considered small entities.

Paragraph (c)(1) of Rule 0–10 under the Exchange Act[150] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2005, the Commission estimates that there were approximately 910 broker-dealers that qualified as small entities as defined above.[151] Small Business Administration regulations define ''small entities'' to include banks and savings associations with total assets of $165 million or less.[152] The Commission estimates that the rules might apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of $165 million or less.

D. Reporting, Recordkeeping and Other Compliance Requirements

The amendments require all issuers, including small entities, to follow the notice and access model. This model does not significantly change an issuer's obligations under current rules. An issuer choosing to follow the notice only option would incur costs identical to costs that it would have incurred under the voluntary model. An issuer following the full set delivery option would incur two costs in addition to the current cost of sending proxy materials under the traditional method: (1) The cost of preparing a Notice of Internet Availability of Proxy Materials and (2) the cost of posting the proxy materials on a Web site with anonymity controls.

For purposes of the Paperwork Reduction Act, we have estimated that the Notice would take approximately

[140] See letters from ABC, BONY, Reed Smith, Registrar and Transfer, and STA.

[141] See letter from ABC.

[142] See letter from ABC.

[143] See letters from BONY, Registrar and Transfer, and STA.

[144] See letters from BONY and Registrar and Transfer.

[145] See letter from Registrar and Transfer.

[146] See letter from ICI.

[147] 17 CFR 240.0–10(a).

[148] The estimated number of reporting small entities is based on 2007 data including the Commission's EDGAR database and Thomson Financial's Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings. See, for example, *Executive Compensation and Related Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (in which the Commission estimated a total of 2,500 small entities, other than investment companies).

[149] 17 CFR 270.0–10.

[150] 17 CFR 240.0–10(c)(1).

[151] These numbers are based on a review by the Commission's Office of Economic Analysis of 2005 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[152] 13 CFR 121.201.

1.5 hours to prepare because the information is readily available to the issuer. We estimated that 75% of that burden would be incurred by in-house, while 25% of the burden would reflect costs of outside counsel, at a cost of $400 per hour, or approximately $150 per Notice. With respect to printing the Notice, for purposes of the Cost-Benefit Analysis we estimated a cost of $0.13 per copy to print the Notice. However, an issuer may reduce this cost by incorporating the Notice information into its proxy materials.

As we noted in our Cost-Benefit Analysis, we anticipate the cost of posting the proxy materials on a publicly accessible Web site to be relatively low. Although an issuer may choose to pay more for an elaborate Web site, the rules do not require such a Web site. An issuer with a small shareholder base may be able to post its materials on a free Web hosting service. As we note in more detail in the Cost-Benefit Analysis, based on our estimate of the typical size of a proxy statement and annual report, we estimate such services provide sufficient bandwidth for approximately 1,000 to 25,000 hits per month.[153] We also noted that several Web hosting services provided Web sites which would handle up to five million hits per month are available for approximately $5 to $8 per month, or $60 to $96 per year. Based on a review of several Internet Web page design firms, we estimate that the design of a Web site meeting the base requirements of the rules would be approximately $300.

Intermediaries must follow substantially similar requirements with respect to beneficial owners of the issuer's securities. Issuers, including small entities, are required to reimburse intermediaries for the cost of complying with these requirements. These costs are incorporated in our estimate of costs to issuers.

E. Agency Action To Minimize Effect on Small Entities

The amendments require all issuers and intermediaries, including small entities, to follow the notice and access model. The purpose of the amendments is to provide all shareholders with the ability to choose the means by which they can access proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. Exempting small entities would not be consistent with this goal and we do not believe that the additional compliance requirements that we are imposing are significant.

We believe that in the long run, use of the Internet for shareholder communications not only may decrease costs for all issuers, but also may improve the quality of shareholder communications by enhancing a shareholder's ability to search and manipulate proxy disclosures. However, in the short term, we are adopting a tiered system of compliance dates to minimize the burdens on smaller issuers, including small entities. Under this tiered system, issuers that are not large accelerated filers need not comply with the requirements until January 1, 2009. This would provide smaller issuers more time to adjust to the amendments and learn from the experiences of larger filers. Furthermore, adopting the amendments for large accelerated filers before the 2008 proxy season effectively creates a test group of issuers, enabling the Commission to study the performance of the model with a significant number of larger issuers and to make any necessary revisions to the rules before they apply to all issuers, including small entities.

Intermediaries that are small entities also are subject to the amendments. We understand that the task of forwarding proxy materials to over 95% of beneficial ownership accounts currently is handled by a single entity. Because a third-party outsourcing alternative is readily available and issuers are required to reimburse such costs to the intermediary, we believe that imposing the amendments on small entities will not create a substantial burden on small entities. Thus, we have decided not to exempt intermediaries that are small entities from the amendments. Such an exemption may create disparity in the way shareholders receive proxy materials. Shareholders owning securities through such intermediaries would not have the ability to choose the means by which they receive proxy disclosures.

We considered the use of performance standards rather than design standards in the amendments. The amendments contain both performance standards and design standards. We are adopting design standards to the extent that we believe compliance with particular requirements is necessary. For example, we are using a design standard with respect to the contents of the Notice so that investors get uniform information regarding access to important information. However, to the extent possible, we are adopting rules that impose performance standards to provide issuers, other soliciting persons and intermediaries with the flexibility to devise the means through which they can comply with such standards. For example, we are adopting a performance standard for providing for anonymity on the Web site so that issuers and other soliciting persons can determine for themselves the least costly option to meet the requirement.

[153] These calculations are based on typical file sizes of proxy statements and annual reports. The lower capacity (1,000) corresponds to files that are elaborate ''glossy'' annual statements. We believe the higher capacity (25,000) is a more reasonable estimate for small entities because small entities tend to send annual reports on Form 10–K to meet their Rule 14a–3(b) requirements rather than spend the significant cost of producing a ''glossy'' annual report.

IX. Statutory Basis and Text of Amendments

We are adopting the amendments pursuant to sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and sections 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–3 by revising paragraph (a) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with:

(1) A publicly-filed preliminary or definitive proxy statement, in the form and manner described in § 240.14a–16, containing the information specified in Schedule 14A (§ 240.14a–101);

(2) A preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter) and containing the information specified in such Form; or

(3) A publicly-filed preliminary or definitive proxy statement, not in the form and manner described in § 240.14a–16, containing the information specified in Schedule 14A (§ 240.14a–101), if:

(i) The solicitation relates to a business combination transaction as that term is defined in § 230.165 of this chapter; or

(ii) The solicitation may not follow the form and manner described in § 240.14a–16 pursuant to the laws of the state of incorporation of the registrant;

* * * * *

3. Amend § 240.14a–7 by removing Note 3 to § 240.14a–7.

§ 240.14a–7 [Amended]

■ 4. Amend § 240.14a–16 by:

■ a. Revising paragraphs (a), (d)(3), (f)(2)(i), (f)(2)(ii), (h), (j)(3), and (n); and

■ b. Adding paragraph (f)(2)(iii).

The revisions and additions to read as follows:

§ 240.14a–16 Internet availability of proxy materials.

(a)(1) A registrant shall furnish a proxy statement pursuant to § 240.14a–3(a), or an annual report to security holders pursuant to § 240.14a–3(b), to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or if no meeting is to be held, 40 calendar days or more prior to the date the votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section.

(2) Unless the registrant chooses to follow the full set delivery option set forth in paragraph (n) of this section, it must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare, print and send a Notice of Internet Availability of Proxy Materials to beneficial owners at least 40 calendar days before the meeting date.

* * * * *

(d) * * *

(3) A clear and impartial identification of each separate matter intended to be acted on and the soliciting person's recommendations, if any, regarding those matters, but no supporting statements;

* * * * *

(f) * * *

(2) * * *

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials;

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials; and

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)) and the rules thereunder.

* * * * *

(h) The registrant may send a form of proxy to security holders if:

(1) At least 10 calendar days or more have passed since the date it first sent the Notice of Internet Availability of Proxy Materials to security holders and the form of proxy is accompanied by a copy of the Notice of Internet Availability of Proxy Materials; or

(2) The form of proxy is accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by § 240.14a–3(b).

* * * * *

(j) * * *

(3) The registrant must provide copies of the proxy materials for one year after the conclusion of the meeting or corporate action to which the proxy materials relate, provided that, if the registrant receives the request after the conclusion of the meeting or corporate action to which the proxy materials relate, the registrant need not send copies via First Class mail and need not respond to such request within three business days.

* * * * *

(n) *Full Set Delivery Option.*

(1) For purposes of this paragraph (n), the term full set of proxy materials shall include all of the following documents:

(i) A copy of the proxy statement;

(ii) A copy of the annual report to security holders if required by § 240.14a–3(b); and

(iii) A form of proxy.

(2) Notwithstanding paragraphs (e) and (f)(2) of this section, a registrant or other soliciting person may:

(i) Accompany the Notice of Internet Availability of Proxy Materials with a full set of proxy materials; or

(ii) Send a full set of proxy materials without a Notice of Internet Availability of Proxy Materials if all of the information required in a Notice of Internet Availability of Proxy Materials pursuant to paragraphs (d) and (n)(4) of this section is incorporated in the proxy statement and the form of proxy.

(3) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not comply with

(i) The timing provisions of paragraphs (a) and (l)(2) of this section; and

(ii) The obligation to provide copies pursuant to paragraph (j) of this section.

(4) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not include in its Notice of Internet Availability of Proxy Materials, proxy statement, or form of proxy the following disclosures:

(i) Paragraphs 1 and 3 of the legend required by paragraph (d)(1) of this section;

(ii) Instructions on how to request a copy of the proxy materials; and

(iii) Instructions on how to access the form of proxy pursuant to paragraph (d)(7) of this section.

■ 5. Amend § 240.14a–101 by revising the first sentence of Item 4(a)(3) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 4. Persons Making the Solicitation—(a) * * *

(3) If the solicitation is to be made otherwise than by the use of the mails or pursuant to § 240.14a–16, describe the methods to be employed. * * *

* * * * *

■ 6. Amend § 240.14b–1 by:

■ a. Revising the introductory text of paragraph (d); and

■ b. Adding paragraph (d)(5).

The revision and addition read as follows.

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a–16(d), the broker or dealer shall:

* * * * *

(5) Notwithstanding any other provisions in this paragraph (d), if the broker or dealer receives copies of the proxy statement and annual report to security holders (if applicable) from the soliciting person with instructions to forward such materials to beneficial owners, the broker or dealer:

(i) Shall either:

(A) Prepare a Notice of Internet Availability of Proxy Materials and forward it with the proxy statement and annual report to security holders (if applicable); or

(B) Incorporate any information required in the Notice of Internet

Availability of Proxy Materials that does not appear in the proxy statement into the broker or dealer's request for voting instructions to be sent with the proxy statement and annual report (if applicable);

(ii) Need not comply with the following provisions:

(A) The timing provisions of paragraph (d)(1)(ii) of this section; and

(B) Paragraph (d)(4) of this section; and

(iii) Need not include in its Notice of Internet Availability of Proxy Materials or request for voting instructions the following disclosures:

(A) Legends 1 and 2 in § 240.14a–16(d)(1); and

(B) Instructions on how to request a copy of the proxy materials.

* * * * *

■ 7. Amend § 240.14b–2 by:

■ a. Revising the introductory text of paragraph (d); and

■ b. Adding paragraph (d)(5).

The revision and addition read as follows.

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a–16(d), the bank shall:

* * * * *

(5) Notwithstanding any other provisions in this paragraph (d), if the bank receives copies of the proxy statement and annual report to security holders (if applicable) from the soliciting person with instructions to forward such materials to beneficial owners, the bank:

(i) Shall either:

(A) Prepare a Notice of Internet Availability of Proxy Materials and forward it with the proxy statement and annual report to security holders (if applicable); or

(B) Incorporate any information required in the Notice of Internet Availability of Proxy Materials that does not appear in the proxy statement into the bank's request for voting instructions to be sent with the proxy statement and annual report (if applicable);

(ii) Need not comply with the following provisions:

(A) The timing provisions of paragraph (d)(1)(ii) of this section; and

(B) Paragraph (d)(4) of this section; and

(iii) Need not include in its Notice of Internet Availability of Proxy Materials or request for voting instructions the following disclosures:

(A) Legends 1 and 2 in § 240.14a–16(d)(1); and

(B) Instructions on how to request a copy of the proxy materials.

* * * * *

■ 8. Amend § 240.14c–2 by revising paragraph (d) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(d) A registrant shall transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16; provided, however, that the registrant shall revise the information required in the Notice of Internet Availability of Proxy Materials, including changing the title of that notice, to reflect the fact that the registrant is not soliciting proxies for the meeting.

■ 9. Amend § 240.14c–3 by revising paragraph (d) to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(d) A registrant shall furnish an annual report to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16.

By the Commission.

Dated: July 26, 2007.

Florence E. Harmon,

Deputy Secretary.

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