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United States Government Accountability Office
Washington, DC 20548

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August 15, 2007

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Shareholder Choice Regarding Proxy Materials*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled "Shareholder Choice Regarding Proxy Materials" (RIN: 3235-AJ79). We received the rule on July 26, 2007. It was published in the *Federal Register* as a final rule on August 1, 2007. 72 Fed. Reg. 42,222.

The final rule allows shareholders to choose the means by which they access proxy materials. The final rule requires issuers and other soliciting persons to post their proxy materials on an internet website and provide shareholders notice of the internet availability of the materials. The issuer or soliciting person may also provide hard paper copies along with the notice. Shareholders may also request hard paper copies at no charge to the shareholder.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Richard Hillman, Managing Director, Financial Markets and Community Investment. Mr. Hillman can be reached at (202) 512-8678.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Florence E. Harmon
Deputy Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"SHAREHOLDER CHOICE REGARDING PROXY MATERIALS"
(RIN: 3235-AJ79)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of this final rule. According to the Commission, the benefits include using the versatility of the internet, reducing paper processing costs, reducing the costs of proxy contests, and lower environmental costs. The Commission estimates the costs of this final rule under the voluntary option to be between \$1.3 and \$6.5 million and for the full set delivery option to be between \$14.9 and \$26.8 million. The approximate cost to establish new websites is between \$1.4 and \$2.6 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a Final Regulatory Flexibility Analysis in connection with this final rule. The Commission concluded that this final rule will apply to numerous public companies, investment companies, broker-dealers, and banks, many of which are small entities. The Commission did not exempt small entities from the rule because it determined that doing so would not be consistent with the purpose of the rule and that the additional compliance requirements are not significant. Further, according to the Commission, this rule will decrease costs for all users in the long run.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. The Commission published a proposed rule on January 29, 2007. 72 Fed. Reg. 4176. The Commission received 23 comment letters, to which they responded in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Office of Management and Budget (OMB) has approved the information collection requirements in this final rule. The OMB Control Numbers are 3235-0059 and 3235-0057.

Statutory authorization for the rule

The Commission promulgated this final rule under sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934 and sections 20(a), 30, and 38 of the Investment Company Act of 1940. 15 U.S.C. §§ 78c(b), 78j, 78m, 78n, 78o, 78w(a), 78mm, 80a-20(a), 80a-29, 80a-37.

Exchange Act, 15 U.S.C. §§ 78c(f), 78w(a)(2)

Section 3(f) of the Exchange Act requires the Commission to determine whether a rulemaking will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act also prohibits any rulemaking that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission concludes that this rule will promote efficiency and capital formation and will not impact competition.

Executive Order No. 12,866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.