



## U.S. Securities and Exchange Commission

### **SEC Votes to Propose Rule to Provide Investors with Internet Availability of Proxy Materials**

**FOR IMMEDIATE RELEASE  
2005-166**

*Washington, D.C., Nov. 29, 2005* — The Securities and Exchange Commission today voted to propose for public comment rules that would allow companies and other persons to use the Internet to satisfy proxy material delivery requirements.

#### **Introduction**

When a person solicits a proxy from the shareholders of a company that is subject to the Commission's proxy rules, Rule 14a-3 currently requires that a proxy statement, which must include specified disclosure, be delivered with or prior to that solicitation. Further, when a company solicits proxies, it also must deliver an annual report to shareholders, which must include additional specified disclosure. Under current rules and Commission interpretations, the proxy statement and annual report must be delivered in paper form or, if the shareholder consents, they may be delivered electronically (for example, by e-mail). The electronic delivery option requires affirmative shareholder consent and currently is used only on a limited basis.

The proposed rules potentially would have two significant benefits: (1) they could result in a substantial decrease in the expense incurred by issuers to comply with the proxy rules; and (2) they would provide persons other than the company with a more cost-effective means to undertake their own proxy solicitations.

#### **Companies' Use of the Proposed "Notice and Access" Model to Furnish Proxy Materials**

The company could satisfy its obligation to furnish proxy materials to shareholders through a "notice and access" model. The company would post its proxy materials on an Internet Web site (other than EDGAR) and would send a "Notice of Electronic Proxy Materials" (the Notice) at least 30 days before the date of meeting.

- The Notice would have to contain the following information:
  - a prominent legend in bold-face type that advises shareholders

of: (1) the date, time, and location of the meeting; (2) the electronic availability of the proxy materials at a specified Web site address; and (3) a toll-free phone number and e-mail address that shareholders may use to request copies of the proxy materials; and

- a clear and impartial description of the matters to be considered at the meeting along with the company's recommendation regarding those matters.
- The Notice would have to be written in plain English and could not include any additional information.

The following procedural requirements also would apply.

- The proxy card would have to be accompanied by, and delivered through the same medium (paper or electronic) as, either the Notice or the proxy statement.
- If a shareholder requested a copy of the materials identified in the Notice, the company would be obligated to send the materials within two business days.
- Additional soliciting materials that are distributed after the Notice is sent would have to be posted on the Web site specified in the Notice.
- For shareholders holding their shares through brokers, banks, or other intermediaries, the Notice and voting instruction form would be delivered through the intermediary. Those shareholders could request copies through either the company or the intermediary.

The proposed rules would have no impact on any state law obligation regarding soliciting proxies or holding annual meetings. Further, the proposed rules would not apply to business combination transactions.

### **Other Soliciting Persons' Use of the Proposed "Notice and Access" Model to Furnish Proxy Materials**

Persons other than the company that are soliciting proxies would be able to rely on the proposed "notice and access" model in substantially the same manner as the company, with appropriate changes in the information required in the Notice. Because a competing solicitation likely would begin only after the company began its solicitation, the Notice would have to be provided to shareholders by the *later* of 30 days before the meeting or 10 days after the company filed its proxy materials.

The proposed rules would continue to permit a soliciting person conducting a proxy solicitation to limit its solicitation to shareholders who are willing to access the soliciting person's proxy materials electronically. Under such a limited solicitation, the soliciting person would have no obligation to deliver

paper or e-mail copies of the proxy materials to anyone. Unlike a company, a soliciting person also would not have to deliver a Notice to shareholders unless the soliciting person wanted to deliver the proxy card or request for voting instructions to shareholders instead of posting it on an Internet website.

Comments on the proposed rules should be received by the Commission within 60 days of their publication in the Federal Register.

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The full text of detailed releases concerning each of these items will be posted to the SEC Web site as soon as possible.

*<http://www.sec.gov/news/press/2005-166.htm>*

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