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## Are Your Proxy Materials Easily Accessible Online?

### Reviewing SEC Proxy Rules

Since the beginning of 2009, the Securities and Exchange Commission has required all issuers to post their proxy materials online, on a publicly-accessible website other than the SEC's own EDGAR site. Before that, compliance had been voluntary for all but large accelerated filers during 2008. Now's the time to review your procedures to make sure you are compliant.

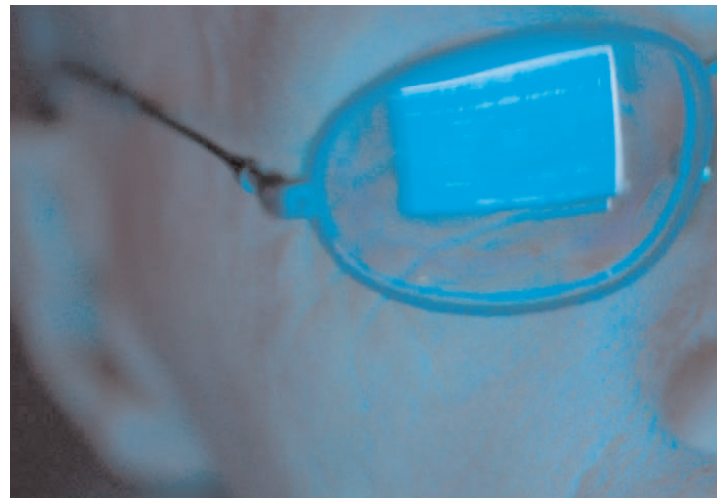
#### Website Requirements

All proxy materials must now be posted online, publicly-accessible, free of charge, and in a format convenient for reading online and printed on paper. Proxy materials must be posted at least 40 days prior to the shareholder meeting and remain available through the conclusion of the meeting. The SEC asks that you consider the size of your files when choosing the format, in consideration of shareholders without broadband connections. The website must not allow "cookies" or other identity-tracking software, to preserve shareholders anonymity while accessing the information.

#### Sending Proxy Materials

The SEC's E-proxy Rules give you two options for making proxy materials (proxy statement, a proxy card, the annual report, and other soliciting material) available to shareholders:

**Notice-Only.** This option allows you to post all proxy materials on the Internet and deliver a Notice of Internet Availability of Proxy Materials to shareholders at least 40 days before a shareholder meeting. At the time that the



Notice of Internet Availability is sent, shareholders must be able to execute a proxy, though the rules allow you to choose the most convenient method:

- An Internet voting platform on the website
- A printable or downloadable proxy card on the website
- A toll-free telephone number for voting

You are not permitted to send a proxy card along with the initial Notice of Internet Availability. However, you can send the proxy card 10 days or more after sending the initial Notice, as long as you include the Notice again.

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Should a shareholder request it, you must deliver full-set proxy materials at no charge. Proxy materials and the Notice may be sent electronically to shareholders who've previously given affirmative consent on electronic delivery. Note that e-mail addresses provided while requesting a proxy may not be used for other purposes, nor disclosed to others.

Other advantages to this option include the ability to avoid printing costs and allowing issuers to follow a "green" initiative to conserve paper.

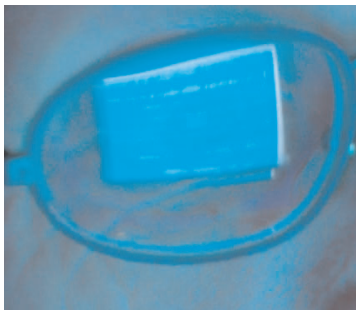
**Full-Set Delivery.** Choosing this option requires you to deliver the Notice of Internet Availability along with a full set of proxy materials, in paper or electronic form. You must also post the proxy materials online as of the date the Notice is sent to shareholders.

You need not send everything 40 days before the meeting date, since shareholders won't need the extra time to request paper or e-mail copies. Also, since the proxy card would be included in the mailing, you need not provide another means to execute proxies (i.e. online voting, etc.). You may also send a reminder proxy card, which does not have to be accompanied by the Notice of Internet Availability.

There is a third option that is a combination of the two – sending the Notice of Internet Availability to some shareholders, while mailing a full set to others. This option can be based on factors including numbers of shares, zip code, domestic vs. foreign shareholders, and whether a shareholder has voted in the last 12 months.

### Affect on Voting

The way you send out proxy materials seems to have a direct affect on shareholder voter participation. Generally, the "notice-only" delivery option significantly lowers the shareholder votes, which may result in difficulty to meet quorum requirements. One survey from 2008 reports that after the notice-only delivery was used, the number of retail accounts voting dropped from 20% to 5% and the number of retail shares voted dropped from 34% to 16%. Should you have a high quorum requirement, the "full-set delivery" option, or at least the combination approach, might be the better choice.



### Other Considerations

The notice-only option likely will not satisfy the U.S. Department of Labor's requirements for electronic delivery of materials. These requirements involve participants in ERISA-covered defined contribution plans, such as 401(k) and employee stock ownership plans. ERISA permits electronic delivery only if a participating employee has reasonable internet access at work or with prior written consent.

Notice-only proxy delivery is expected to increase as people get more comfortable with the technology and satisfied with the cost savings. By following the requirements of the SEC, proxy material delivery, and shareholder online anonymity, you can take full advantage of the options now available to you. **h**

*For more information on these e-proxy rules, contact Partner Pat Fahey at (631) 719-3203, [PFahey@hrrllp.com](mailto:PFahey@hrrllp.com).*

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