# The SEC Adopts Final E-Proxy Rules

On December 13, 2006, the Securities and Exchange Commission (SEC) adopted final amendments to proxy rules that will allow companies to furnish proxy materials to shareholders through a "notice and access" model using the Internet. Internet delivery under the final amendments is permitted at the option of a company, but not required. However, the SEC also proposed making the new Internet delivery process mandatory for all solicitations not related to a business combination transaction. This rule proposal is subject to a 60-day comment period.

Under the final amendments, a company choosing to use the new "notice and access" model must post its definitive proxy materials on an Internet website and send a Notice of Internet Availability of Proxy Materials to shareholders at least 40 days before the meeting date. The Notice must be in plain English, and contain a prominent legend that advises shareholders of (1) the date, time and location of the meeting, (2) the availability of the proxy materials at a specified website address, (3) a toll free phone number, e-mail address and a website that shareholders may use to request copies of the proxy materials, and (4) a clear and impartial description of the matters to be considered at the meeting. A proxy card may not accompany this Notice. However, a company may send a paper proxy card accompanied by another copy of the Notice at any time 10 days or more after sending the initial Notice.

If a shareholder requests a paper or e-mail copy of the proxy materials by phone, e-mail or website, the company must send a copy of the materials within three business days after receiving the request. A shareholder can also make a permanent election to receive all proxy materials by paper copy or by e-mail.

If a company uses the notice and access model, brokers, banks and other intermediaries must prepare and send their own Notices for beneficial shareholders. A beneficial shareholder desiring a paper or e-mail copy of the proxy materials must request one from the intermediary.

Soliciting persons other than the company may also follow the notice and access model in substantially the same manner as the company. For other soliciting persons, the Notice must be sent to shareholders by the later of 40 days before the meeting or 10 days after the company filed its proxy materials. Such a soliciting person may limit his/her solicitation to shareholders who have not

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previously requested paper or e-mail copies, but if the soliciting person sends a Notice to a shareholder, the soliciting person must send that shareholder a paper or e-mail copy upon request.

The new e-proxy rules will be effective on July 1, 2007. No person may comply with the Notice and access model before that date.

John W. White, the Director of the SEC's Division of Corporation Finance, described the final e-proxy rules as being "carefully crafted to decrease substantially the costs incurred by issuers and others soliciting proxies while safeguarding the interests of investors." However, for many issuers, the costs of sending requested paper copies by first class mail may exceed the costs of bulk shipment of printed proxy materials. That is in addition to the added complexity of keeping track of which shareholders have elected to receive paper or e-mail copies and which have not. It remains to be seen whether corporate America will embrace notice and access delivery of proxy materials through the Internet under the new rules, and whether making such delivery mandatory will generate significant opposition. The new rules may also end up helping insurgents and other proxy solicitors more than issuers because they can be more selective in which shareholders they approach.

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