

SEC Proposes Internet Availability of Proxy Materials

At an open meeting held on November 29, 2005, the SEC voted to propose for public comment rules that would allow issuers and other persons to post proxy materials on an Internet website and to provide shareholders with a written notice explaining where the proxy materials are posted and how to obtain a free written copy rather than physically delivering those materials as currently required. Under current rules and SEC interpretations, issuers may avoid physical delivery only if a shareholder consents to electronic delivery. The proposed electronic delivery rules are intended to lower costs for issuers and to provide third parties with a more cost-effective means to solicit proxies.

Under the proposed rules, an issuer will be entitled to use electronic delivery of proxy materials if, at least 30 days before the date of the shareholder meeting, it:

- posts the proxy materials on an Internet website (other than EDGAR) and
- sends a notice, disclosing:
 - the date, time and location of the shareholder meeting;
 - the electronic availability of the proxy materials at a specified website address;
 - a toll-free phone number and e-mail address that shareholders could 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 such issuer's recommendation regarding those matters.

Under the proposed rules, the following requirements also would apply:

- The required notice would have to be written in plain English and could not include any additional information.
- The proxy card would have to be accompanied by, and delivered through, the same medium as either the required notice or the proxy statement.
- No other communications with the notice would be permitted.
- Upon request, issuers will still have to provide paper copies of the proxy materials within two business days of the request.
- The electronic version of the proxy materials would have to be substantially identical to paper copies distributed to shareholders.
- Banks, brokers and other intermediaries would be required to forward the notices to beneficial owners, and shareholders could request paper copies through either the issuer or the intermediary.

The proposed rules would allow electronic proxy material delivery for both issuers and third parties, for example, a third party engaged in a proxy solicitation.

- A party other than the issuer could continue to target specific shareholders, including only those who are willing to receive proxy materials electronically.
- Parties other than the issuer who undertake to deliver paper copies upon request must provide the notice by the later of 30 days before the shareholder meeting or 10 days after the issuer filed its proxy materials.

The Commission noted that the proposal will seek comment on whether the proxy card should remain with the proxy materials, because there is a concern that shareholders may vote without reading the proxy statement. The Commission also noted that the proposed rules would not likely be adopted for the 2006 proxy season. The rule proposal will not address proposed shareholder access rules.

