

March 30, 2010

SEC Amends Rules for Internet Availability of Proxy Materials

Effective March 29, 2010, Rule 14a-16 under the Securities Exchange Act of 1934, as amended, has been amended to provide more flexibility in the format and content of the Notice of Internet Availability of Proxy Materials (the “Notice”) that issuers and other soliciting persons must provide to shareholders in connection with proxy solicitations. The amended rules also attempt to facilitate the use of the notice and access rules by soliciting persons other than the issuer.

Revisions to Rules Regarding the Format and Content of the Notice

The underlying notice and access rules were adopted by the Securities and Exchange Commission in 2007, and require issuers and other soliciting persons to post the proxy materials on the Internet and to provide a Notice to shareholders alerting them to the posting. Soliciting persons have the option to send the entire set of proxy materials or only the Notice. In response to studies showing that shareholder response is lower when a soliciting person simply mails the Notice than the proxy materials, the amended rules are intended to allow soliciting persons to provide a better explanation of the Notice and of the steps shareholders must take to vote their shares.

The amended rules discourage the use of boilerplate language by requiring issuers and other soliciting persons to provide information that addresses certain topics without specifying the exact wording to be used. The revised rules also require the Notice to state that it is not a form for voting and continue to prohibit the inclusion of any information or materials intended to influence shareholder votes (other than the soliciting person’s recommendation) or change the method of delivery of the proxy materials. In addition, in order to mitigate shareholder confusion, the revised rules permit a soliciting person to provide explanatory materials with the Notice, such as an explanation of how a shareholder can receive and review the proxy materials, how to vote shares, and the soliciting person’s reasons for using the Notice-only option. The SEC reiterated from its 2007 Internet Availability of Proxy Material Adopting Release, “The Notice is intended merely to make shareholders aware that these proxy materials are available on an Internet Web site; it is not intended to serve as a stand-alone basis for making a voting decision.”

Timeframe for Delivery of the Notice by Soliciting Persons Other than the Issuer

As originally adopted, Rule 14a-16 required that a soliciting person other than the issuer that wanted to use the Notice-only option send the Notice to shareholders by the later of 40 days prior to the shareholders’ meeting or 10 days after the issuer sends its Notice or proxy statement to shareholders. Because the SEC’s review of the soliciting person’s preliminary proxy materials could exceed 10 calendar days, the soliciting person could be unable to meet the 10-day deadline for sending the Notice and therefore be prevented from using the Notice-only option. In order to address this problem, the amended rules eliminate the specific deadline for a soliciting person to send its Notice to shareholders. Instead, the revised rules require soliciting persons other than the issuer to file a preliminary proxy statement within 10 calendar days after the issuer files its definitive proxy statement and to send their Notice to shareholders no later than the date on which such soliciting persons file their definitive proxy statement with the SEC. Although eliminating the delivery deadline, the SEC stated that it would be in the “best interests” of soliciting persons to make the Notice and proxy materials available to shareholders “with sufficient time for shareholders to review the materials and make an informed voting decision.”