

New Proxy Rules For Public Companies

The SEC recently adopted amendments to its proxy rules creating a new “notice and access model” for public company proxy solicitations. The new rules provide two alternatives for delivering proxy materials: (1) the “notice only” option and (2) the “full set delivery” option. Under both alternatives, an issuer is required to post its proxy materials on an Internet website (other than the SEC EDGAR site) and provide its shareholders with notice of such availability. The new rules became effective January 1, 2008 for large accelerated filers and will take effect on January 1, 2009 for all other filers. The alternatives are not exclusive — an issuer may choose to use the “notice only” option for certain shareholders and the “full set delivery” option for others. The material differences between the alternatives are generally described below.

Notice Only Option

- The issuer must mail a rule-prescribed Notice at least 40 calendar days before the scheduled meeting and must provide the information required in the Notice to intermediaries in sufficient time for intermediaries to deliver the information to beneficial owners at least 40 calendar days before the meeting date.
- The Notice must contain the following information in plain English:
 - Date, time, and location of meeting;
 - Identification of matters to be acted on and issuer’s recommendations;
 - List of materials made available on website;
 - Toll-free telephone number, email address, and website address through which shareholder can request a copy of proxy materials;
 - Any necessary control/identification numbers for accessing the shareholder’s proxy;
 - Instructions on how to access the proxy, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement; and
 - The prescribed legend.
- Shareholders must be permitted to make a permanent election to receive paper or email copies of future proxy materials.
- The issuer may not send a paper or email proxy card to a shareholder until 10 or more calendar days after it has sent the Notice.
- The issuer must send a paper copy of proxy materials by first-class mail, or by email if requested, to any shareholder who requests a copy within three days of the issuer’s receipt of the request.
- Advantages:
 - The issuer could realize potentially large cost savings due to expenses saved from printing paper copies for all shareholders.
- Disadvantages:
 - It will be difficult to predict the number of paper copies that might be requested.
 - The proxy materials must be finalized earlier.
 - The issuer could experience a decline in voting.

Full Set Delivery Option

- The issuer must mail a paper copy of the entire set of proxy materials to shareholders.
- The rule-prescribed Notice must be included, but (i) it does not have to be mailed 40 calendar days before the scheduled meeting and (ii) it need not include instructions on how to request a copy of proxy materials or instructions on how to access the shareholder's proxy.
- The Notice may be separate or incorporated into the proxy materials.
- Advantages:
 - The issuer has more time to prepare proxy materials.
 - The issuer is not required to provide shareholders with an electronic voting mechanism.
 - The issuer is not required to mail or email copies of proxy materials upon request.
- Disadvantages:
 - The issuer continues to incur costs of printing and mailing to all shareholders.

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