

# THE E-VOLUTION IS HERE

This special feature by *Jeff Stein* is sponsored by  
Computershare and Georgeson.

There is a perception that the SEC's notice and access rule will create problems for issuers in terms of managing fulfillment requests, cause fewer retail shareholders to vote, increase activist power, and generally bring about confusion for all participants in the voting process. But with an understanding of the rules and a little advance preparation, issuers can ensure compliance, increase voter participation and begin to realize significant print and postage-related cost savings.

'Yes, the rules will bring change, and there is an element of uncer-

tainty to manage,' says Paul Conn, president of global capital markets at Computershare. 'But this uncertainty is mostly centered on the first year of transition. Along with industry partners like financial printers, we've been working on strategies to minimize first-year risk, so we can use the new rules to benefit issuers and investors.'

Issuers with fall meetings in 2007 can choose to be early adopters under the voluntary model already approved by the SEC. Mailing notices of electronic access can begin as early as July 1, 2007, for meetings on or after August 10, 2007. The sooner an

issuer applies the notice and access model, the sooner it should realize efficiencies and savings.

If the proposed mandatory rule is approved, from January 2008 issuers with market caps of \$700 mn or more must mail shareholders a notice regarding the availability of proxy materials on a publicly accessible website (other than EDGAR), including easy-to-follow directions for accessing the materials. Smaller issuers would have to start from January 2009.

## FULFILLMENT CHALLENGES

Many of the recent concerns about notice and access relate to the vagueness of the proposed voluntary SEC rule – for example, the fulfillment turnaround times. With publication of the final voluntary and proposed mandatory rules, the SEC has clarified how much time each party has to react (see *Timing and guidelines*, opposite).

Computershare believes there will be a relatively small percentage of shareholders who will ask to receive paper-copy materials every time. Their concern about losing access to important information and feelings of increased burden can be minimized with a clear message: shareholders need actively indicate their preference once only. From then on, their standing preference for print or online will

## Timing and guidelines

- Mail notice at least 40 calendar days before shareholder meeting.
- Optional: mail a second notice with a proxy card ten days later.
- When notice is sent, post searchable and downloadable materials on a publicly accessible website available through the date of the shareholder meeting.
- Fulfill all paper requests free of charge for up to one year following the shareholder meeting.
- Issuer or its agent has three business days to provide materials to investors. (Computershare is in discussion with the SEC to consider the transfer agent an intermediary, which would allow a total of six days to fulfill paper requests.)
- On the beneficial side, issuers have a total of nine business days if investors go through intermediary ADP.
- Capture and retain paper copy preferences for future mailings.

*Note: The state law Notice of Meeting may be included, or combined, with the notice. Notice and access is not allowed for business combinations – special meetings for mergers and acquisitions must be preceded by a mailing of paper materials.*

be followed automatically.

Even under the proposed rule requiring mandatory internet posting, issuers would still be able to print and mail paper materials along with the notice of web-accessible material, removing uncertainty about print quantities. But it's unlikely any issuers will do this if they are interested in practicing modern shareholder communications or saving postage costs.

One way to maximize the impact of the proxy distribution alternatives is to use notice and access for certain shareholders and send paper copies to others. 'We can analyze shareholder data, then strategically segment and target investors for maximum effect,' explains Charlie Rossi, Computershare's executive vice president of client services.

Companies embracing new technology probably will see an increase in online traffic, especially during proxy season. 'Some of our clients have expressed concern about their own website capacity, so we are looking at different hosting options for them,' adds Rossi.

As part of the new notice and access rules, there will be fulfillment reporting requirements. Transfer agents are already required to track turnaround times for investor communications, however, so the reporting element should already be in place.

### SHAREHOLDER SUPPORT

Asking shareholders to proactively opt-in for paper copies or find information online may cut the number

of proxy votes from retail investors. However, less than 35 percent of all retail investors currently vote, and the proposed rules are unlikely to change that apathy. 'The best way to substantially increase voter participation is with a proactive solicitation,' says David Drake, president of Georgeson.

'A proven, user-friendly process should be welcomed by companies and investors that have already embraced online services, such as electronic banking and shopping,' adds Conn. 'A one-page notice is also likely to get more attention in our world of short attention spans than the current phone book-sized packs.'

As voter participation is unlikely to decrease, the power of activists is not expected to change. Activists who use the notice and access model to launch counter campaigns must adhere to the same rules as issuers. As for the proposed removal of the broker discretionary vote, this may cause a reduction in the number of shares voted, but that would be the case with or without notice and access. This issue is being addressed by the NYSE Proxy Working Group.

A streamlined way of voting, which could arise from notice and access, should make it easier for shareholders to participate. Issuers should communicate the notice and access process to their shareholders as a positive step in shareholder engagement and explain how it can improve corporate governance.

Other benefits, such as reducing company costs and environmental

impact through the reduction of print and mail output, should also be welcomed. According to American Forests, the nation's oldest non-profit citizens' conservation organization, the notice and access model could save 800,000 trees and remove 267,000 tons of greenhouse gas each year. With corporate social responsibility increasingly a factor for many investors, companies should embrace – and strongly communicate – the environmental benefits.

### PRIORITIES AND CONSIDERATIONS FOR ISSUERS

Now is the time to analyze system resources to ensure you are ready to post and host in 2008. Issuers should talk to their agents and vendors to estimate first-year print demand to avoid coming up short, while lowering costs. Mostly, issuers can look at the new rules as an opportunity to have more meaningful and deeper communications with shareholders. ■

### For more information

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For full details of the voluntary rule and proposed mandate go to <http://www.sec.gov/rules/final/2007/34-55146.pdf>.