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## SEC ADOPTS MANDATORY E-PROXY REQUIREMENTS

The Securities and Exchange Commission (the “Commission”) recently adopted amendments to its proxy rules under the Securities Exchange Act of 1934, as amended (the “Act”), which require issuers and other soliciting persons to post their proxy materials on a publicly accessible Internet website (other than the Commission’s EDGAR website) and to provide shareholders with a notice of the Internet availability of such materials.<sup>1</sup> Under the new rules, an issuer or other soliciting person may choose to furnish paper copies of the proxy materials along with the notice of Internet availability. If the issuer or other soliciting person chooses not to furnish paper copies of the proxy materials along with the notice, a shareholder may request delivery of a copy of the proxy materials at no charge to the shareholder. The amendments **do not** apply to proxy solicitations related to business combination transactions.

Compliance with this mandatory or universal “notice and access” model of proxy distribution (commonly known as “e-proxy”) will be phased in as follows:

### Compliance Dates

- large accelerated filers are required to comply with the new rules regarding e-proxy solicitations commencing on or after **January 1, 2008**; and
- registered investment companies, persons other than issuers and issuers that are not large accelerated filers (1) **may** comply with the new rules regarding e-proxy solicitations commencing on or after January 1, 2008 and (2) **must** comply with the amendments regarding e-proxy solicitations commencing on or after **January 1, 2009**.

Earlier this year, the Commission adopted a voluntary notice and access model that issuers and other soliciting persons may comply with on a voluntary basis for proxy solicitations commencing on or after July 1, 2007.<sup>2</sup> While some expressed reservations about imposing a mandatory notice and access model before the Commission had an opportunity to evaluate the costs and consequences of the voluntary notice and access model, the Commission unanimously adopted the mandatory notice and access model with the phase-in described above.

### I. Summary of Mandatory Notice and Access Model

The new rules create two options that issuers and other soliciting persons can use to provide their proxy materials to shareholders – the “notice only option” and the “full set delivery option.” Soliciting parties may choose to rely on one option with respect to some shareholders and the other option for different shareholders.

<sup>1</sup> Commission Release No. 34-56135 is available at <http://sec.gov/rules/final/2007/34-56135.pdf>.

<sup>2</sup> For more details regarding the voluntary notice and access model, please refer to our April 30, 2007 client memorandum, “SEC Permits Internet Delivery of Proxy Materials.”

Under the notice only option, an issuer must comply with exactly the same requirements as under the voluntary notice and access model, including:

- sending a “Notice of Internet Availability of Proxy Materials” (the “issuer Notice”) to shareholders at least 40 calendar days before the date of the shareholder meeting to which the proxy materials relate;
- posting the proxy materials on a free, publicly accessible Internet website (other than the Commission’s EDGAR website);
- providing at least one means of executing a proxy vote on the Internet website concurrently with the delivery of the issuer Notice, such as an electronic voting platform, a telephone number for executing a proxy or a printable proxy card; and
- sending paper copies of the proxy materials to shareholders upon request within three business days, free of charge.

Under the full set delivery option, an issuer can continue to rely on traditional means of proxy delivery by sending a full set of proxy materials<sup>3</sup> to shareholders, with two additional requirements:

- the issuer must either (1) include an issuer Notice with its proxy materials or (2) incorporate the information required in the issuer Notice into its proxy statement and proxy card; and
- the issuer must post its proxy materials on a free, publicly accessible Internet website (other than the Commission’s EDGAR website) no later than the date the issuer Notice was first sent to shareholders.

## II. The Notice and Access Model for Issuers

Following the applicable compliance date of the new rules, an issuer must follow the mandatory notice and access model when furnishing proxy materials to its shareholders, including: (1) notices of shareholder meetings, (2) Schedule 14A proxy statements and consent solicitation statements; (3) proxy cards; (4) Schedule 14C information statements; (5) annual reports to shareholders; (6) additional soliciting materials; and (7) any amendments to such materials that are required to be furnished to shareholders. Issuers must use the notice and access model to disseminate proxy materials to all categories of shareholders, whether registered or beneficial owners, and with respect to any solicitation, *except* those related to business combination transactions.

The mandatory notice and access model allows an issuer to select either of the following two options to provide proxy materials to shareholders: (1) the “notice only option” and (2) the “full set delivery option.” An issuer does not have to choose one option or the other as the exclusive means for providing proxy materials to shareholders. Rather, an issuer may use the notice only option to provide proxy materials to some shareholders and the full set delivery option to provide proxy materials to other shareholders. Also, as with the voluntary notice and access model, the mandatory notice and access model does not apply if the laws of an issuer’s state of incorporation would prohibit the issuer from furnishing proxy materials in that manner.

### A. The Notice Only Option – Sending a Notice Without a Full Set of Proxy Materials

Under the notice only option, an issuer follows the same procedures that the Commission established under the voluntary notice and access model that issuers may choose to comply with for e-proxy solicitations commencing on or after July 1, 2007. Under these procedures, the issuer must send an issuer Notice to shareholders at least 40 calendar days before the shareholder meeting date (or the date that consents or authorizations may be used to effect the corporate action). No other materials may accompany the issuer Notice except for any notice of the shareholder meeting required under state corporation law and, if desired, a pre-

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<sup>3</sup> A “full set” of proxy materials would contain (1) a proxy statement or information statement, (2) an annual report if one is required by Rule 14a-3(b) or Rule 14c-3(a) and (3) a proxy card or, in the case of a beneficial owner, a request for voting instructions, if proxies are being solicited.

addressed postage-paid reply card that shareholders can use to request a paper or e-mail copy of the proxy materials.

The new rules permit an issuer to “household” the issuer Notice pursuant to Rule 14a-3(e). Accordingly, an issuer may send a single copy of the issuer Notice to one or more shareholders residing at the same address if the issuer satisfies all of the conditions set forth in Rule 14a-3(e). An issuer is not required to re-solicit specific consent regarding the householding of the issuer Notice from shareholders if it has obtained their consent to householding of proxy materials in the past. However, as is currently required under householding rules, an issuer must allow each householded account to execute separate proxies and must provide separate identification or control numbers, if it uses such numbers, to each account at the shared address.

## 1. Contents of the Issuer Notice

Under the notice only option of the mandatory notice and access model, the issuer Notice must include the following information in clear and understandable terms:

- A prominent legend in bold-face type that states:  
**“Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].**
  - **This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.**
  - **The [proxy statement] [information statement] [annual report to shareholders] [is/are] available at [insert website address].**
  - **If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [insert a date] to facilitate timely delivery.”**
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on, and the issuer’s recommendations, if any, regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified website;
- (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet website address where the shareholder can request a copy of the proxy materials for all future meetings and for the particular meeting to which the issuer Notice relates;
- Any control/identification numbers that the shareholder needs to access a proxy card;
- Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement; and
- Information about attending the shareholder meeting and voting in person.

The issuer Notice also may contain a statement advising shareholders that no personal information other than the identification or control number is necessary to execute a proxy. In designing the issuer Notice, the issuer may include pictures, logos or similar design elements so long as the design is not misleading and the required information is clear. Where applicable, the issuer must revise the information contained in the issuer Notice, including any title to the document, to reflect the fact that the issuer (1) is conducting a consent solicitation rather

than a proxy solicitation or (2) is not soliciting proxy or consent authority, but is furnishing an information statement.

The issuer Notice must be written in plain English and may contain only the information described above and any other information required by applicable state law for a shareholder meeting notice (if the issuer chooses to combine the issuer Notice with the shareholder meeting notice required by state law). The form of the issuer Notice will constitute other soliciting material that the issuer or other soliciting person must file with the Commission pursuant to Rule 14a-6(b) no later than the date on which it is first sent to shareholders.

## **2. Design of Internet Website; Website Confidentiality**

All proxy materials identified in the issuer Notice must be posted on a publicly accessible Internet website (other than the Commission's EDGAR website) by the time the issuer sends the issuer Notice to shareholders. The issuer also must post any subsequent additional soliciting materials on the website no later than the date on which such materials are first sent to shareholders or made public. These materials must remain on that website and be accessible to shareholders, at no charge, through the conclusion of the related shareholder meeting. As discussed above, the issuer Notice must identify clearly the Internet website address at which the proxy materials are available. The Internet website address must be specific enough to lead shareholders directly to the proxy materials, rather than to the home page or other section of the website on which the proxy materials are posted.

The electronically posted proxy materials must be presented on the Internet website in a format or formats convenient for both reading online and printing on paper. When determining the readability and printability of formats, issuers should consider the size of the files because many shareholders do not have broadband Internet connections. The electronically posted proxy materials should be posted in a format that provides a version of those materials, including all charts, tables, graphics and similar formatted information, which is substantially identical to the paper version of the materials. In addition, the materials must be presented in a readily searchable format, such as HTML, which may incorporate additional user-friendly features such as hyperlinks from a table of contents to enable shareholders to more quickly and easily navigate through the document. To the extent a shareholder may need additional software to view the document, the website must contain a link to enable the shareholder to obtain such software free of charge.

An issuer or its agents must maintain the Internet website used in connection with the notice and access model in a manner that does not infringe on the anonymity of a shareholder accessing that website. Accordingly, (1) the issuer or its agents may not track the identity of persons accessing that website to view the proxy statement; (2) the website cannot require the installation of any "cookies" or other software that might collect information about the accessing person<sup>4</sup>; (3) the issuer and its agents may not use any e-mail addresses provided by a shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder; and (4) an issuer may not disclose a shareholder's e-mail address to any other person without the shareholder's consent, except to an agent or employee of the issuer in connection with the distribution of proxy materials. The issuer is, of course, permitted to track the identity, by means of shareholders' use of issuer-provided control or identification numbers, of persons voting on an electronic platform in order to validate the election results.

## **3. Providing a Means to Vote; Delivery of Proxy Cards**

Under the notice only option, an issuer must provide shareholders with a method to execute proxies as of the time the issuer Notice is first sent to shareholders. An issuer can satisfy this requirement through a variety of methods, including providing an electronic voting platform, a toll-free telephone number for voting (which telephone number may appear on the website but not on the issuer Notice) or a printable or downloadable proxy

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<sup>4</sup> This restriction may require that an issuer segregate the pages on which the proxy materials are posted from the rest of the issuer's regular website or create a new website. Although issuers need not turn off the website's connection log that automatically tracks numerical IP addresses that connect to that website, issuers may not use those numbers to attempt to find out more information about persons accessing the website.

card on the Internet website. Merely providing a shareholder with a means to request a paper proxy card would not be sufficient.

Under the notice only option, an issuer is not permitted to furnish the proxy card together with the initial issuer Notice for a particular solicitation. Instead, an issuer must post the proxy card on the website with the other proxy materials no later than the time at which the issuer Notice is first sent to shareholders. The new rules permit an issuer following the notice only option to send a proxy card to shareholders 10 calendar days or more after sending the initial issuer Notice to shareholders. The issuer must include with the proxy card either a copy of the proxy statement and any annual report to shareholders or another copy of the issuer Notice.

#### **4. Requests for Copies of Proxy Materials**

An issuer that furnishes proxy materials using the notice only option must comply with the requirements of Rule 14a-16(j) to deliver a copy of the proxy statement, annual report to shareholders (if applicable) and proxy card to a requesting shareholder. Upon receipt of such request, the issuer must send a copy (in paper or by e-mail, as requested) of those materials to the shareholder at no charge within three business days after receiving the request. When the issuer provides a paper copy of the proxy materials, the issuer must use first class mail or other reasonably prompt means of delivery. This delivery obligation continues until one year after the conclusion of the meeting or corporate action to which the materials relate. However, the new rules clarify that an issuer is not required to use first class mail and is not subject to the three day response deadline with respect to requests for copies received after the conclusion of the meeting.

Under the new rules, shareholders have the ability to make a single election to receive a paper or e-mail copy of the proxy materials on a continuing basis in the future. As noted above, the issuer Notice must include a toll-free telephone number, e-mail address and Internet website address as a means by which a shareholder can request a copy of the proxy materials for the particular meeting referenced in the issuer Notice or make a permanent election to receive paper or e-mail copies of the proxy material on a continuing basis.<sup>5</sup> A shareholder that elects to receive paper or e-mail copies may, in the future, revoke that election. The issuer must maintain records of shareholder requests to receive materials in paper form or via e-mail for future solicitations and must continue to provide paper or e-mail copies of the materials to a shareholder who has made such a request until the shareholder revokes such request.

#### **B. The Full Set Delivery Option: Sending a Notice with a Full Set of Proxy Materials**

Under the full set delivery option, an issuer follows procedures that are substantially similar to the traditional means of providing proxy materials in paper.<sup>6</sup> Under this option, in addition to sending a full set of proxy materials to shareholders as under the traditional proxy delivery method, an issuer must: (1) either send an issuer Notice or incorporate all of the information required to appear in the issuer Notice into the proxy statement and proxy card; and (2) post the proxy materials on a publicly accessible website no later than the date the issuer Notice was first sent to shareholders. As under the notice only option, issuers may household the issuer Notice and other proxy materials pursuant to Rule 14a-3(e).

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<sup>5</sup> The Commission previously indicated that, to assist issuers in estimating the number of paper copies of proxy materials required for a proxy solicitation under the notice and access model, issuers are permitted to communicate with their shareholders well in advance of a proxy solicitation in order to explain the notice and access model generally and to determine which shareholders wish to receive copies of proxy materials in the future in paper form or by e-mail.

<sup>6</sup> Under the traditional proxy delivery scheme, issuers are permitted to send proxy materials to shareholders via e-mail provided they follow Commission guidance regarding electronic delivery, which typically requires obtaining affirmative consent from individual shareholders. Issuers may continue to rely on such guidance to send materials electronically to shareholders under the new rules.

## **1. Contents of the Issuer Notice or Incorporation of Notice Information**

Under the full set delivery option, a separate issuer Notice is not required if the issuer presents all of the information required in the issuer Notice in its proxy statement and proxy card. An issuer may, however, prepare a separate issuer Notice if it so desires. The information required in the issuer Notice, or in the proxy materials if no separate issuer Notice is prepared, includes much, but not all, of the information that is required under the notice only option, including the following:

- A prominent legend in bold-face type that states:  
**“Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].**
  - **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [insert website address].”**
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on and the issuer’s recommendations, if any, regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified website;
- Any control/identification numbers that the shareholder needs to access his or her proxy card; and
- Information about attending the shareholder meeting and voting in person.

If the issuer elects to prepare a separate issuer Notice, it must be written in plain English and may contain only the information specified by the new rules and any other information required by applicable state law for a shareholder meeting notice (if the issuer chooses to combine the issuer Notice with the shareholder meeting notice required by state law). The issuer Notice also may contain a statement advising shareholders that no personal information other than the identification or control number is necessary to execute a proxy. The form of the issuer Notice will constitute other soliciting material that the issuer must file with the Commission pursuant to Rule 14a-6(b) no later than the date on which it is first sent to shareholders.

## **2. Design of Internet Website; Website Confidentiality**

An issuer following the full set delivery option must post all proxy materials identified in the issuer Notice (or in the proxy statement and proxy card if no separate issuer Notice is prepared) on the publicly accessible Internet website address specified in the issuer Notice (or the proxy statement and proxy card, as applicable) on or before the date that it sends the proxy materials to shareholders. The requirements imposed on issuers following the notice only option regarding the design of the Internet website and confidentiality of shareholders accessing that website apply equally to issuers following the full set delivery option.

## **3. Providing a Means to Vote; Delivery of Proxy Cards**

As discussed above, the notice and access model requires an issuer to provide shareholders with a method to execute proxies as of the time the issuer Notice is first sent to shareholders. If an issuer follows the full set delivery option, the proxy card or request for voting instructions included in the full set of proxy materials satisfies this requirement. Accordingly, the issuer does not need to provide another means for shareholders to execute proxies or submit voting instructions when complying with the full set delivery option. An issuer relying on the full set delivery option may choose to deliver another copy of the proxy card to shareholders who have not returned the card. The reminder proxy card may be sent at any time after the full set of proxy materials has been sent, and does not have to be accompanied by the issuer Notice.

#### 4. Differences Between the Full Set Delivery Option and the Notice Only Option

The full set delivery option varies from the notice only option in the following ways:

- An issuer may accompany the issuer Notice with copies of all of the proxy materials;
- An issuer need not prepare a separate issuer Notice if the issuer incorporates all of the issuer Notice information into the proxy statement and proxy card;
- Because the issuer already has provided shareholders with a full set of proxy materials, the issuer need not provide the shareholder with copies of the proxy materials upon request, and the issuer may exclude information from the issuer Notice on how a shareholder may request such copies;
- Because shareholders will not need extra time to request paper or e-mail copies of the proxy materials, the issuer need not comply with the 40-day deadline in Rule 14a-16 for sending the issuer Notice and full set of proxy materials; and
- Because the full set of proxy materials includes a proxy card or request for voting instructions, the issuer need not provide another means for voting at the time the issuer Notice is provided unless it chooses to do so.

### III. Implications of the Notice and Access Model for Intermediaries

Under Rules 14b-1 and 14b-2, brokers or dealers, banks and other intermediaries are required to furnish proxy materials, including a notice of internet availability (the “intermediary Notice”), to beneficial owners of the issuer’s securities based on the notice and access model. The issuer or other soliciting person must provide each intermediary with the information necessary to prepare, print and send the intermediary’s Notice to beneficial owners within the timeframes called for by the new rules. Whether the issuer or other soliciting person elects to follow the notice only option or the full set delivery option with respect to beneficial owners, the intermediary Notice must contain the same information as the issuer Notice, with certain revisions to reflect the differences between registered holders and beneficial owners.

#### A. Intermediaries Following the Notice Only Option

An issuer that complies with the notice only option must provide the intermediary with the relevant information in sufficient time for the intermediary to prepare and send its intermediary Notice and post the proxy materials on the website<sup>7</sup> at least 40 calendar days before the shareholder meeting date. In addition, the intermediary must: (1) provide a means to access a request for voting instructions for its beneficial owner customers no later than the date the intermediary Notice is first sent; (2) forward paper or e-mail copies of the proxy materials upon request; (3) permit the beneficial owners to make a permanent election to receive paper or e-mail copies of the proxy materials; (4) maintain records of the beneficial owners’ preferences; and (5) provide proxy materials in accordance with those preferences.

Under the notice only option, the intermediary cannot include a request for voting instructions with the intermediary Notice. However, at the issuer’s request, the intermediary is required to send a copy of the request for voting instructions to beneficial owners, provided that at least 10 days have passed since the intermediary Notice was first sent to beneficial owners. A copy of the intermediary Notice, or a copy of the proxy statement, must accompany that request for voting instructions.

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<sup>7</sup> In preparing the intermediary Notice, the intermediary may choose whether to direct beneficial owners to the issuer’s website or to its own website to access the proxy materials. If it directs beneficial owners to its own website, access to that website must be free of charge and may not compromise a beneficial owner’s anonymity. If it directs beneficial owners to the issuer’s website, the intermediary must inform beneficial owners that they can submit voting instructions to the intermediary, but cannot execute a proxy directly in favor of the issuer unless the intermediary has executed a proxy in favor of the beneficial owner.

Under the new rules, a beneficial owner may not request paper or e-mail copies of the proxy materials directly from the issuer. Instead, the intermediary Notice must provide instructions on how a beneficial owner can request copies of the proxy materials from the intermediary. When a beneficial owner requests copies of the proxy materials from the intermediary, the intermediary must in turn request such copies from the issuer within three business days of receiving the request. Then, the issuer must send the copies to the intermediary within three business days of receiving the intermediary's request. Finally, the intermediary is required to forward the copies to the requesting shareholder within three business days of receiving the copies from the issuer.

#### **B. Intermediaries Following the Full Set Delivery Option**

When the issuer elects to deliver a full set of proxy materials to beneficial owners, the intermediary must either (1) prepare a separate intermediary Notice and forward it with the full set of proxy materials or (2) incorporate any information required in the intermediary Notice and not appearing in the issuer's proxy statement in its request for voting instructions. An issuer that complies with the full set delivery option need not comply with the 40-day deadline, but instead must provide the relevant information to the intermediary in sufficient time for the intermediary to prepare and send the intermediary Notice along with the full set of proxy materials provided by the issuer. Under the full set delivery option, as with the traditional method of delivering proxy materials, the intermediary must forward the issuer's full set of proxy materials to beneficial owners within five business days of receipt from the issuer or the issuer's agent.

#### **IV. Soliciting Persons Other Than the Issuer**

Under the new rules, a person other than the issuer who undertakes solicitation of proxies also must comply with the notice and access model. Such a person may solicit proxies pursuant to the notice only option, the full set delivery option or a combination of the two. The mechanics of a solicitation under the mandatory notice and access model for a person other than the issuer are similar to those used by the issuer, with some important differences noted below.

##### **A. Mechanics of Proxy Solicitations**

Because soliciting persons other than the issuer are not subject to the requirements of Section 14(c) of the Act, they have no obligation to furnish an information statement to shareholders from whom no proxy authority is sought. Consequently, soliciting persons can limit the cost of a solicitation by soliciting proxies only from a select group of shareholders, such as those with large holdings or those who have not previously requested paper copies of proxy materials, without furnishing other shareholders with any information. The new rules relate only to the means of furnishing information to shareholders and do not affect a soliciting person's ability to effect targeted solicitations.

Under the new rules, a soliciting person other than the issuer must follow the same procedures as the issuer under the notice and access model. For example, under the notice only option, such person (1) must furnish a notice (the "soliciting person Notice") to shareholders and post the proxy statement on a publicly accessible Internet website, (2) may not include a proxy card with the initial soliciting person Notice, (3) may send a proxy card to the shareholders it is soliciting 10 calendar days or more after initially sending the soliciting person Notice to them, if the proxy card is accompanied either by a copy of the proxy statement or by another copy of the soliciting person Notice and (4) send a paper or e-mail copy of the proxy materials to any requesting shareholder to whom it has sent a soliciting person Notice. Alternatively, if the soliciting person elects to follow the full set delivery option, such person, in addition to sending proxy materials to shareholders as under the traditional method, also must (1) send a soliciting person Notice or incorporate all of the information required to appear in the soliciting person Notice into the proxy statement and proxy card and (2) post the proxy materials on a publicly accessible website no later than the date the proxy materials are first sent to shareholders.

##### **B. Timeframe for Sending Soliciting Person Notice**

The new rules require a soliciting person other than the issuer that elects to follow the notice only option to send out a soliciting person Notice by the later of: (1) 40 calendar days prior to the shareholder meeting; or (2) 10 calendar days after the issuer first sends out its proxy statement or issuer Notice to shareholders. This timing requirement does not apply to a solicitation pursuant to the full set delivery option.



### C. Content of the Soliciting Person Notice

The content of the soliciting person Notice can be different from the content of the issuer Notice. In some cases, if a solicitation in opposition is launched before the issuer has sent its own proxy statement or issuer Notice, the full shareholder meeting agenda may not be known to the soliciting person at the time it sends its soliciting person Notice to shareholders. In such case, the soliciting person must provide a clear and impartial identification of each separate matter on the agenda to the extent known by the soliciting person. The soliciting person also must include a clear statement indicating that there may be additional agenda items of which the soliciting person is not aware and that the shareholder cannot direct a vote for those items on the soliciting person's proxy card provided at that time. In other cases, a person soliciting proxies in opposition to the issuer may provide a partial proxy card that solicits proxy authority only for the agenda items in which the soliciting person is interested rather than for all of the items. In such case, the soliciting person Notice must clearly state whether execution of the soliciting person's proxy card will invalidate the shareholder's prior vote using the issuer's proxy card on matters not presented on the soliciting person's proxy card.

### D. Shareholder Lists and Furnishing of Proxy Materials by the Issuer

Rule 14a-7 sets forth the obligation of issuers either to provide a shareholder list to a requesting shareholder or to send the shareholder's proxy materials (including, if applicable, the soliciting person Notice) on the shareholder's behalf. Under the new rules, if the issuer is providing its shareholder list to a soliciting person, the issuer is required to indicate which of those shareholders have requested paper copies of the proxy materials only for the meeting to which the solicitation relates and which of those shareholders have requested paper copies of the proxy materials for all meetings. If the issuer is sending the soliciting person's proxy materials (including, if applicable, the soliciting person Notice) on the soliciting person's behalf, the soliciting person is responsible for providing the issuer with copies of its proxy materials for all shareholders to whom it intends to provide proxy materials. The issuer is then obligated to send the soliciting person's proxy materials to the specified shareholders with reasonable promptness after receipt from the soliciting person. If the other soliciting person is following the notice only option and wishes to send proxy cards to shareholders 10 or more days after it first sends the soliciting person Notice, the issuer is required to forward those proxy cards in a similar fashion.

### E. The Role of Intermediaries With Respect to Other Soliciting Persons

Intermediaries generally furnish proxy materials to beneficial owners on behalf of soliciting persons other than the issuer under certain conditions specified in the Commission's proxy rules. The new rules further clarify that intermediaries are **obligated** to send proxy materials on behalf of soliciting persons other than the issuer.

**If you have any questions regarding the Commission's new e-proxy solicitation rules, including how your company may comply with the new rules, please contact the Vorys attorney with whom you are in contact regularly or a member of our firm's Corporate and Finance Group by calling (614) 464-6400.**

*The contents of this Securities Alert are for general information purposes only and do not constitute a full legal analysis of the subject matter discussed herein. The information in this Securities Alert should not be relied upon as specific legal advice, which should be given only after a thorough and complete review of all relevant facts and circumstances in each case.*