



Business Law / SEC Information Memo

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Bond, Schoeneck & King, PLLC

New York

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Securities Law Practice Group

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Edward R. Conan
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REMINDER: SEC'S E-PROXY RULES COMPLIANCE FOR ALL JANUARY 1, 2009

Beginning *January 1, 2009*¹ all public companies must post their proxy materials² on a publicly available Internet website and provide shareholders with a notice informing them that the proxy materials are available on the Internet and explaining how to access the materials. This notice, called the "Notice of Internet Availability of Proxy Materials", must be filed with the Securities and Exchange Commission no later than the date it is first sent to shareholders.

Companies may choose between two proxy delivery options:

1. **The "Notice Only Option"** – Under this option, a company will • post all of its proxy materials on an Internet website and • send its shareholders the Notice of Internet Availability of the proxy materials at least 40 calendar days before the shareholder meeting date, or if no meeting is to be held, at least 40 calendar days before the date that votes, consents or authorizations may be used to effect a corporate action. Under the "notice only option", a company must:

- post all related proxy materials on the Internet website on or prior to the date the Notice of Internet Availability is first sent to shareholders;
- provide shareholders with a method to execute proxies as of the time the Notice of Internet Availability is first sent to shareholders. This requirement can be satisfied by providing a toll-free telephone number for voting, placing a printable or downloadable proxy card on the Internet website,

or by providing an electronic voting platform. If a telephone number for executing proxies is provided, the telephone number cannot appear in the Notice of Internet Availability, it can only appear on the Internet website, otherwise a shareholder could execute a proxy without having access to the proxy statement;

- provide paper or e-mail copies of the proxy materials (at no charge) to shareholders requesting copies;
- allow shareholders to make a permanent election to receive paper or e-mail copies of all future proxy materials (and maintain records of the elections); and
- provide a toll-free number, e-mail address and Internet website address for shareholders to request a copy of the proxy materials relating to the shareholders meeting referenced in the Notice of Internet Availability and to make a permanent election to receive paper or e-mail copies of proxy materials on a continuing basis with respect to all meetings.

2. **The "Full Set Delivery Option"** – Under this option, a company is permitted to deliver a full set paper copy of its proxy materials to its shareholders, provided the company also • posts the proxy materials on an Internet website and • sends its shareholders a Notice of Internet Availability of Proxy Materials. The Notice of Internet Availability can be included separately with the full set of paper proxy

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materials or incorporated into the proxy materials mailed to shareholders. The proxy materials must be posted on the Internet website no later than the date the Notice of Internet Availability is first sent to shareholders. Under the “full set delivery option”:

- the proxy materials do not need to be sent at least 40 days prior to the shareholders meeting;
- companies do not need to provide paper or e-mail copies of the proxy materials to shareholders to whom it has furnished proxy materials;
- the Notice of Internet Availability does not need to include instructions on how shareholders can request paper or e-mail copies of proxy materials; and
- companies do not need to provide another means for voting at the time the Notice of Internet Availability is provided, since the full set paper distribution includes a proxy card.

Additional considerations with respect to the “full set delivery option” and the “notice only option” :

1. The two delivery options are not mutually exclusive. A company 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.

2. The Notice of Internet Availability may only contain the information specified in the proxy rules, other than information required by state law, if the company combines the Notice of Internet Availability with any shareholder meeting notice required under state law.

3. The e-Proxy rules do not apply to proxy materials relating to business combination transactions.

4. Intermediaries, such as broker-dealers and banks, are required to follow the proxy delivery option chosen by the company whose proxy materials they deliver. Accordingly, if a company chooses the “notice only option”, the company will have to provide its intermediaries with the proxy materials in advance of the 40-day notice deadline to allow the intermediaries to prepare, print and send the Notice of Internet Availability to the company’s beneficial owners at least 40 calendar days before the shareholder meeting date. While a company electing to use the full set delivery option does not have to comply with the 40-day notice deadline, it does have to provide the proxy

materials and the Notice of Internet Availability (if separate) to its intermediaries in time for the intermediaries to prepare, print and send the material to the beneficial owners, as is currently the case.

5. A proxy card accompanies the proxy materials under the “full set delivery option”. Under the “notice only option”, paper and e-mail proxy cards cannot be sent until at least 10 calendar days after the Notice of Internet Availability has been sent, unless the form of proxy is accompanied or preceded by a copy of the other proxy materials. The rationale behind this requirement is to give shareholders time to access the proxy materials on the Internet website or to request copies of the proxy materials before voting.

6. Companies must make all proxy materials identified in the Notice of Internet Availability publicly accessible, free of charge, at the Internet website address specified in the Notice on or before the date on which the Notice is sent to shareholders. The SEC’s EDGAR website does not qualify as a “publicly accessible Internet website”. The proxy materials must remain on the Internet website until the shareholders meeting is concluded. Proxy materials must be posted on the Internet in a format convenient for both reading online (i.e., searchable, such as HTML) and for printing on paper (which must be substantially identical to the paper version). This requirement applies to annual reports (including glossy annual reports) as well as proxy statements. The Internet website must be designed so as to maintain the confidentiality of shareholders accessing it. Specifically, companies may only use a shareholder’s e-mail address to send a copy of proxy materials, may not disclose a shareholder’s e-mail address to any person and may not install cookies or other tracking features on the website.

In Buffalo / Niagara Falls, call 716-566-2800 or e-mail:
Robert A. Doren rdoren@bsk.com

In the Capital District, call 518-533-3000 or e-mail:
Gregory J. Champion gchampion@bsk.com

In Central New York, call 315-218-8000 or e-mail:
Ronald C. Berger rberger@bsk.com
Catherine A. King caking@bsk.com

In the New York Metro area, call 646-253-2300 or e-mail:
Louis P. DiLorenzo ldilorenzo@bsk.com

In the Rochester Region, call 585-362-4700 or e-mail:
Robert H. Kirchner rkirchner@bsk.com

¹ Large accelerated filers have been subject to the SEC’s e-Proxy Rules since January 1, 2008.

² Proxy materials include proxy statements, proxy cards, information statements, annual reports to shareholders, notices of shareholder meetings, additional soliciting materials, and any amendments to proxy materials.