

Registrar and Transfer Company

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November 5, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-22-09, Amendments to Rules Requiring Internet Availability of
Proxy Material

Dear Ms. Murphy:

Registrar and Transfer Company (“R&T”) appreciates the opportunity to comment on the proposed Notice and Access (“N&A”) rule changes and concerns expressed on the reduced retail voting and cost implications. R&T has been an independent transfer agent for over 110 years and currently provides transfer agent services for more than 1,050 issues. R&T acts in the capacity as proxy distribution agent and tabulator for more than 790 shareholder meetings annually. R&T and R&T’s affiliate, Commerce Financial Printers, assisted dozens of issuers through implementing web hosting and various N&A strategies. By comparing year-to-year voting percentages for select companies, we were able to gain insight into the retail voting results that the different approaches to N&A generated. While most of our clients have relatively small retail shareholder bases and our sample population is small, the analysis, we believe, has merit across thousands of similar sized companies.

Overall Analysis and Conclusions

N&A does far more good than harm and should not be suspended. Many retail shareholders have very small share amounts held in registered retail position with most companies having more than 90% of their retail investors holding less than 1,000 shares. These shareholders are far less likely to review the annual meeting materials or make any effort to vote if voting requires some initiative such as going on-line. The savings to issuers and, more important, the environment, that are gained by not printing and mailing millions of paper reports were tremendous and should not be discounted due to lower voting returns. This being said, there are steps that can be taken, we believe, to improve retail shareholder voting returns across the board as well as broaden the benefit that N&A provides.

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Based upon observing voting results over a two-year period on companies using different N&A distribution strategies, but with similar shareholder bases, we don't believe that the Notice's format is the major reason for reduced retail voting observed in many instances. While the population of companies observed with year-to-year comparative data was small, the results appear consistent across the companies observed and logical within the context of our experiences. The restrictive language contained in the Notice may confuse or intimidate some retail shareholders, but the reduced voting rates were largely obviated under certain scenarios, leading us to conclude that there are several combining factors contributing to reduced voting percentages. Our observations are summarized below:

- **Single Notice Results:** In reviewing the voting results for companies that sent a single N&A Notice to registered shareholders, we found that these issuers saw dramatic decreases in the **number of shareholders** voting, year-to-year. In some instances, the numbers of retail registered shareholders voting dropped more than 70%. Some representative year-to-year voting percentages are: 33.4% dropping under N&A to 13.6%; 41.5% dropped to 12.4%; 27.5% dropped to 8.7%; 44.8% dropped to 11.4%.
- **Stratified Approach:** Companies using a stratified approach, mailing full sets of materials to select retail shareholders holding more than a threshold number of shares, usually 1,000 shares, resulted in **only a slight reduction in the number of shares** voted by this population, while the decrease in the **number of overall retail shareholders** voting was large.
- **Second Notice Approach:** In comparing the results of companies similar in shareholder bases and business, we observed a compelling difference in the percentage of registered retail shareholders voting when the issuer mailed a second Notice along with a proxy card and Business Reply Envelope ("BRE"). In the latter distribution mode, we even saw some companies increase the percentage of shareholders voting when compared to earlier years. These are a few representative statistics of our sampling noting improvement in registered retail shareholder voting: from 17.5% to 32.4% and 38.9% to 40.2%. More frequently, the voting dropped, but the decrease was minor compared to the single Notice approach. Representative examples noted are: 36.6% to 35.1%; 47.4% to 39.8%; 51.1% to 43.2% and 25.3% to 23.3%. In not sending a second Notice and proxy card, issuers were clearly trying to reduce costs. Some issuers may have been elected not to make the second mailing based upon the increase street processing fees attributable to N&A discussed and analyzed below.

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- **Registered versus Beneficial Retail Holders:** We could not analyze retail shareholder voting results for individual companies for registered versus beneficial holders, as the data is not available. However, the overall reported retail voting results for beneficial holders appears to be lower than the percentage of registered retail shareholders that vote under normal or N&A conditions. This may be attributable to several factors including a greater affinity that registered shareholders may have for the issuer. However, it may also be attributed to the formats and branding used by issuers communicating directly to registered shareholders. Using a Voting Instruction Form with a format that is a generic, computer mark-sense form and sending the material in generic mailers may be less likely to stimulate a response than sending material and an individually designed proxy card that is branded by the issuer's name and logo. The latter may foster a greater issuer-recognition and sense of ownership.
- **N&A Utilization:** Most smaller companies delivered full sets of material rather than Notices. Many companies complained of the 40-day deadline. These companies, although individually small, in the aggregate represent a significant amount of paper waste and adverse environmental impact.
- **N&A Cost:** N&A, where utilized, provided significant printing and postage cost benefits. These benefits were partially offset by **higher**, not lower, street processing fees. One analysis of this is provided below. The invoice that was analyzed had approximately 6,000 beneficial holders and resulted in an increase in **processing fees of 18.25%** despite sending Notices to about 1,500 beneficial shareholders. It is counter-intuitive that mailing Notices, in lieu of assembling, enclosing and mailing large sets of paper proxy materials to these holders, would result in higher processing fees. Given the street distribution monopoly, the non-contractual business relationship between the issuer, the party paying the bills, and the street service provider, and the New York Stock Exchange's determination that "market forces" set the fees, despite the complete absence of any market forces, N&A fees were permitted to be **layered on top of existing fees without accounting for a reduction in processing costs attributable to the suppression of paper copies**. This will not discourage the use of N&A by larger issuers, but makes the economics questionable for smaller companies and may result in some companies not mailing a second Notice and proxy card.

Based upon the results we observed in comparing year-to-year results for the same companies, we have concluded that the failure to provide an easy means of voting exclusive of going on-line, may discourage many "mom and pop" retail holders from voting. Many issuers sent a single Notice to avoid the cost of mailing a second Notice and proxy card. However, issuers were

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prohibited from providing a proxy card or telephone voting number. Shareholders were required, in most instances, to go on-line to vote. When issuers sent a second Notice and a proxy card, the registered retail voting did decrease by small percentages in most cases and increased in a few instances. The latter result may lead one to conclude that the simpler format of a Notice and card actually stimulates voting because it does not provide a bulky tome of intimidating material to the retail holder.

Specific Responses to the Proposals

Has the use of the N&A model made proxy material more or less accessible? Will flexibility in design of the Notice make it clearer?

The proxy material was just as easy to access before and after N&A for those shareholders who wanted to take the least efforts to obtain the material. We believe that flexibility to design notice to encourage voting and educate shareholders will improve responses, but with limited success. Retail shareholders often don't take the time to read documents. The more information there is in a document, the less likely it is to be read by many retail shareholders. Most retail shareholders that vote don't review the proxy material in detail and respond when a simple, quick and easy method of voting is presented. Those that actually have the interest in reading the proxy and financial documents will grasp the Internet access and utilize it or mail back the paper request form. Very few holders requested paper copies, usually less than 2% of the population.

What discouraged retail voting was the failure by many issuers to provide a second Notice with a proxy card. The first Notice also did not have a telephone number for immediate voting. The objective in excluding these items, we understand, was to ensure that shareholders had access to the proxy materials prior to voting by requiring them to go on-line where they could view the material, print a card or vote via telephone or on-line link. Lacking a card resulted in shareholders not taking the time to go on-line to view the material and link into the voting site.

One alternative is to permit issuers to send a single Notice with a proxy card and BRE and a short summary proxy statement reviewing just the issues to be voted on (as stated in the full proxy statement) and how to access or receive the full proxy statement. The short statement could encourage shareholders to view the full material before voting, but not require them to do so. This would reduce printing and postage while, our analysis indicates, it would retain or improve retail voting without depriving the retail holders that have the initiative and interest to review the full proxy statement from the opportunity to do so.

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Does permitting issuers to choose to which shareholders to provide notice-only and full sets delivery affect voting rates? If so, how are issuers exercising their discretion over full set delivery and are they doing it appropriately?

Using full-set delivery for selective shareholders was a very effective method to permit issuers to cost-effectively utilize N&A. Shareholders with larger positions have greater economic interest and are far more likely to vote. A study conducted a number of years ago by R&T indicated that a much higher percentage of registered retail shareholders with larger positions voted versus the remaining registered shareholders. Under N&A, issuers received a share-range analysis showing the number of shareholders and total shares within a given share range. From this, they were able to evaluate savings versus ownership percentages/economic interest. In most instances, issuers selected shareholders with 1,000 or more shares as the cutoff point for receiving full sets of material. This resulted in the issuer experiencing minimal decreases in the percentage of shares voted by retail shareholders. The number of retail shareholders voting may have dropped significantly, dependent upon the decision to mail a second Notice, but the percentage of shares voted by retail holders did not.

Are there additional requirements that could be made to increase voting?

Requiring the mailing of a second Notice with proxy card and BRE will, we believe, improve retail-voting percentages in many instances. Another more cost-effective alternative is to permit issuers to include a proxy card and BRE with the initial Notice along with advice to view the proxy material before voting or with a shortened summary proxy statement with selective data and descriptions of the information available on-line. We also believe eliminating the current street-controlled distribution of Voting Instruction Forms and empowering issuers to distribute proxies to registered and beneficial retail shareholders will greatly improve retail voting percentages, irrespective of the use of N&A. Retail voting percentages have decreased over the years just as the percentage of shares held in street name by retail investors has increased.

Should we prohibit using N&A model if the vote decreased?

We believe that this is a step backwards that is not justified at this time. The N&A model provides adequate ability for those with minimal interest in voting to view the material and vote. Other alternatives listed above should be tried first before abandoning the N&A model.

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Will shareholders find the Notice more confusing if the SEC does not proscribe the format?

We don't think so. Issuers that wish to enhance the communication will be enabled to utilize corporation communication skills to help educate and encourage shareholder voting. Many will probably not change the Notice appreciably. SEC should outline the topics that can be addressed and these should focus on the importance of the vote, the benefits of the N&A and the general N&A process. Issuers should not be discouraged from educating the holders of the environmental and cost benefits that are achieved by their voting under the N&A process. Explaining that N&A may be eliminated or reduced if voting failures occur, thereby harming the issuer and environment, may give shareholders the reason they need to exercise the slight effort required to vote.

Should we permit the Notice to be accompanied by materials to explain the process?

We believe that issuers should be permitted the latitude of providing additional explanatory information. However, the more material provided, the less likely retail shareholders are to read it and the more likely they are to discard it out of hand. To improve voting while retaining the benefits of N&A, the material that accompanies the Notice should be restricted to information germane to the shareholder meeting or explanatory regarding the voting process and importance of voting. Therefore, optimally the rules will provide the appropriate latitude in this area.

What changes can be made to help shareholders better understand the Notice?

Providing the issuer flexibility to describe the N&A process, the purpose of the Notice and the importance of shareholder voting without rigid parameters will improve the comprehension in some instances. However, we are not confident that this will be embraced or, where issuers take the effort to craft plain English communications, that retail shareholder voting will be significantly improved. Attempted voting of the Notice, as mentioned by the Commission, did not occur in significant numbers and we do not believe that the Notice was overly confusing or closely resembled the registered proxy cards that we observed. Ultimately, we believe that all shareholders, both registered and beneficial, would be best served by providing the traditional proxy card and BRE with the initial Notice along with information directing them to a web site for the proxy materials or the ability to call and request a paper set. Many retail shareholders, particularly those with smaller share balances, would not, in the past, review the paper materials and will not now take the time to view the materials on-line.

