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February 13, 2006

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303
Attention: Nancy M. Morris, Secretary

Re: Internet Availability of Proxy Materials (Release No. 34-52926; File No. S7-10-05)

Ladies and Gentlemen:

On behalf of the Association of Corporate Counsel ("ACC"), formerly known as the American Corporate Counsel Association, ACC's Corporate & Securities Law Committee is pleased to have the opportunity to comment on the proposal by the Securities and Exchange Commission (the "Commission") regarding the Internet availability and delivery of proxy materials. ACC is the in-house counsel bar association, serving the professional needs of attorneys who practice in the legal departments of corporations and other private sector organizations worldwide. Since its founding in 1982, ACC has grown to more than 18,000 members in more than 58 countries who represent 7,500 corporations, with 46 Chapters and 13 Committees serving the membership. Its members represent 49 of the Fortune 50 companies and 98 of the Fortune 100 companies. Internationally, its members represent 42 of the Global 50 and 74 of the Global 100 companies. The Corporate & Securities Law Committee is the largest of ACC's committees, with over 7,200 attorney members, many of who are employed by public companies that are subject to the Commission's disclosure requirements.

General Comments

We applaud the Commission's proposed rule that would provide public companies with the ability and flexibility to take full advantage of current technology for the delivery of proxy materials. We believe that the rule, if adopted in substantially the same form as proposed, would greatly reduce participating companies' costs and expenses of printing and delivering proxy materials. However, we do think it important to point out that, while overall costs should decrease, per item costs and expenses associated with the printing, production, distribution, postage and intermediary services related to a more limited number of paper copies are likely to become more expensive due to the loss of economies of scale and shortened turn-around requirements. We agree with the Commission that the adoption of these rules would promote the use of the Internet as a reliable and fast means of distributing proxy materials to shareholders.

These proposed rules are a logical extension of the Commission's previously published positions recognizing the quickness, reliability and cost-effectiveness that the Internet and electronic mail provide public companies for communicating with their shareholders and potential investors. Since 2000, the federal securities laws have allowed public companies and intermediary nominee holders to deliver annual meeting materials through electronic means to a shareholder or beneficial owner who provided the company or the nominee with the holder's affirmative consent to receive materials in that format. Furthermore, the Commission has promulgated numerous other rules that either directly or indirectly recognize the increased acceptance and reliability of the Internet, including disclosure rules relating to Form 8-K requirements and the prospectus delivery requirements. With continued technological advancements and the increased acceptance of the Internet as a reasonable and appropriate method of communication by both the general public and the business community, we believe it is now the time to go beyond the current proxy delivery rules and allow the "notice and access" delivery method, as proposed in the release.

We believe it is important for the Commission and other commentators not to lose sight of the fact that the proposed "notice and access" method does not prevent shareholders from receiving written copies of proxy materials. If a shareholder does not have access to the Internet, would rather not review the materials on a computer or does not wish to print out the materials in hard copy form, the proposed rule allows the shareholder to simply request a printed copy from the company or intermediary nominee holder and receive it within a few days, free of charge. The requirements in the proposed rule that: (i) a public company provide written notice to all of its shareholders at least 30 days in advance; (ii) such notice be accompanied with instructions to access the proxy materials on the Internet or request a copy from the company (including a toll-free telephone number); and (iii) a company must send a copy of all of the written materials to any requesting shareholder within two business days of receiving the request, should provide enough time for shareholders who wish to receive printed materials to receive and review the materials and vote on the matters to be brought before the shareholders at the subject meeting. As a practical matter, we do not believe the maintenance of records of shareholders who request paper copies should be required, as shareholders may change their preferences from year to year.

Because of the potential for tremendous cost savings to public companies, the additional efficiencies in the shareholder voting process and the protective provisions to ensure shareholder access to printed materials, we strongly support the Commission's proposed rule regarding Internet availability of proxy materials.

Specific Comments

While we support the Commission's rule as proposed, we have responses and suggestions related to several of the Commission's specific questions contained in the release. These responses, which we have grouped by general topic and do not necessarily follow in the same order as the Commission's questions in the release, are as follows:

Easy access to materials. We generally believe that the proposed "notice and access" model will be most successful if shareholders have all possible access to the materials and are afforded every opportunity to participate in the voting process. Therefore, we would support rules requiring that public companies: (i) make their proxy materials available in a widely used and accepted format (such as .pdf or html) readily downloadable by all methods of connecting to the Internet, including dial-up connections; (ii) make the materials readily available in one place or from one page on the Internet; and (iii) include a date on the notice by which a request for written materials should be made to ensure that the shareholder receives the requested materials sufficiently in advance of the voting deadline.

No prior consent. We do not believe that the "notice and access" model should be based on obtaining the prior consent of a shareholder. We believe that this is too similar to the current rules regarding the electronic delivery of proxy materials, and that to realize fully the potential cost savings of the proposed rule, while still protecting shareholders who may prefer to receive the printed materials from the company, it is necessary to finalize the rule in this regard as proposed.

Available to all public companies and shareholders. We believe that the proposed "notice and access" model should be made available for all public companies to use for all of their shareholders. Both large and small public companies will be able to benefit from the rule – and the company is in the best position to make the decision regarding whether to use this alternative. Moreover, because the proposed rule does not affect any of the qualitative or quantitative disclosures that are required to be included in the proxy materials, we do not believe that a distinction should be made for these purposes among Form S-3 and non-Form S-3 eligible companies or whether companies have timely filed their periodic reports.

Additionally, we do not believe that shareholders should be treated differently under the rule. We believe that it would be difficult for a public company to classify its shareholders (institutional vs. individual or more financially sophisticated vs. less financially sophisticated, as set forth in the Commission's request for comments) and that it may lead to privacy concerns in

collecting the data and logistical issues in maintaining the accuracy of the data from year to year.

Proxy card delivery. We believe that the final rule should allow, as proposed, public companies to distribute the proxy card along with the notice of the meeting, regardless of whether a printed copy of the proxy statement is included with the notice or proxy card. While it is possible that a shareholder could vote his or her shares without having reviewed the proxy statement, this is no different than under the current system in which there is no guarantee or requirement that a shareholder open and read a proxy statement that is included with the proxy card. Under the proposed rule, each shareholder who receives a proxy card in this manner will have the ability and the time to either access the materials on the Internet or to receive printed copies through the mail.

Flexibility for Issuers. We believe it is important to provide flexibility within the rules to distribute notices, proxy cards and other proxy materials by means that will facilitate voting without becoming overly prescriptive. Allowing issuers and their shareholders to select the distribution method, without requiring that issuers use the same method for all proxy materials, will allow issuers to effectively distribute materials to all shareholders in the manner deemed most efficient and appropriate by each issuer.

Use of intermediaries. We fully support the rule as proposed requiring third party intermediaries to follow the "notice and access" model if requested by the public company. Because of the large number of shareholders who hold shares through a third-party broker, bank, trust company, and similar intermediary, companies must be able to require these intermediaries to use the "notice and access" model to realize the efficiencies of the model. We believe that it will be cost effective for the intermediaries and will give all shareholders, beneficial and record, the full advantages of Internet delivery.

We recognize that there are many details that need to be resolved in any final rule regarding the specific requirements for intermediaries to effectively establish the "notice and access" model. These include, but are not limited to, the maintenance of a web site for posting the annual meeting materials and voting instructions or providing a link to a site containing such documents, and providing a mechanism for a beneficial shareholder to request delivery of his or her materials through the mail. We are confident that these concerns can be adequately addressed to ensure the effectiveness of the "notice and access" model with beneficial shareholders. However, we should point out that the broader issues of shareholder communications and the role of intermediaries still need to be resolved as pointed out by the Business Roundtable, Society of Corporate Secretaries and Governance Professionals, National Investor Relations

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Institute and Securities Transfer Association in prior communications with the SEC. Specifically, we believe that the shareholder communication rules should facilitate effective and efficient communications between companies and all of the beneficial owners of their securities. Technology should be embraced to make these communications more timely and allow companies to communicate directly with their shareholders.

Use by Third Parties. We believe that the Commission should take a "wait and see" approach before extending the flexibility of the proposed rules to non-issuers. This approach would ensure that adequate safeguards are in place so that the increased flexibility provided to non-issuers will not unduly disadvantage issuers when used for other than bona fide purposes.

Business Combinations. The Commission is correct to exclude proxies containing business combination proposals from the use of the internet delivery of proxy materials at this time. The primary reason is that the length and complexity of these materials merit different treatment.

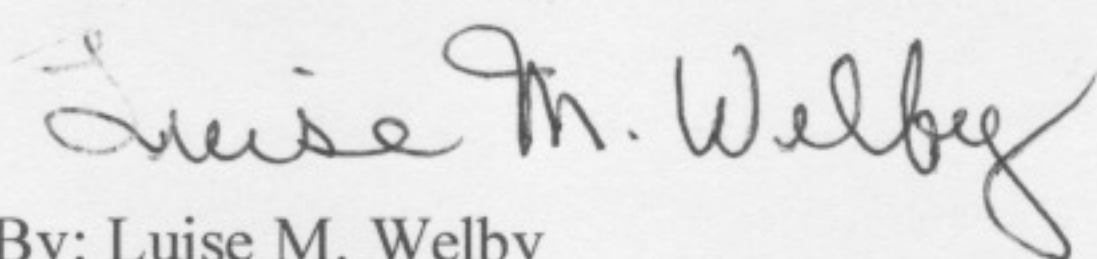
Conclusion

Based upon the above, we strongly support the Commission's proposed rule on Internet availability of proxy materials. The foregoing summarizes our principal positions on the proposed rule, as well as many, but not all, of the specific items on which the Commission requested comments.

We are pleased to offer our comments on this proposed rule and we hope that this letter will be a useful contribution to the debate. Please contact the undersigned at (703) 903-3242 if you wish to discuss in more detail any of the above.

Respectfully Submitted,

ASSOCIATION OF CORPORATE COUNSEL



By: Luise M. Welby

Chair, Corporate & Securities Law Committee

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cc: Hon. Christopher Cox, Chairman of the Securities and Exchange Commission
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Annette L. Nazareth, Commissioner