Mellon

Mellon Investor Services

February 13, 2006

Via e-mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: File Number S7-10-05 – Internet Availability of Proxy Materials

Ladies and Gentlemen:

Mellon Investor Services LLC ("Mellon"), a leading provider of shareholder and related services, is pleased to submit its comments to the Securities and Exchange Commission (the "Commission") on the proposed amendments to the proxy rules (the "Proposal") that would provide an alternative "notice and access" model for furnishing proxy materials to shareholders. Since 2000, Mellon has offered its transfer agency clients an array of electronic solutions for delivery of the Commission's required disclosure documents, as well as for proxy voting and other shareholder services. These services reflect a focus on meeting the needs of shareholders while helping the issuers to avoid unnecessary costs. Mellon is a member of the Securities Transfer Association ("STA") and contributed to the STA comment letter submitted in support of the Proposal; however, we offer these additional comments because we believe that our particular experiences may be helpful to the Commission in evaluating the Proposal.

Mellon fully supports adoption of the Proposal, and believes that the Commission is taking a significant step forward in promoting the efficient and cost effective use of the Internet and electronic communications. The Proposal reflects the continuing trend toward electronic communication with investors and affords cost savings to issuers. However, as discussed below, Mellon believes that the Proposal does not address the broader need to update the beneficial shareholder communication system. We hope the Commission will soon address this broader issue so that issuers can directly communicate with beneficial shareholders, as they now do with registered holders, and provide increased accuracy in the recording of proxy votes.

Shareholder Acceptance of Electronic Delivery

The benefits to issuers and shareholders of web-based delivery over paper are clear. Mellon has been providing cost effective Internet based shareholder service solutions to its clients for more than five years, including web-based account access and self service, and electronic delivery of shareholder communications. About ninety percent of Mellon's transfer agent clients offer electronic delivery of non-proxy related documents. In 2005 alone, Mellon electronically delivered over 1 million such documents. Currently, 31% of the registered shareholders of issuers served by Mellon who vote do so electronically (58% vote telephonically and 42% use the Internet). For Mellon clients that offer their shareholders the ability to interact with Mellon entirely electronically with respect to proxy voting--i.e., seeking affirmative consent to electronic delivery of proxy materials together with electronic proxy voting (web or automated phone system)--more than 20% of shareholders participate. Mellon's experience shows that issuers offering electronic delivery can achieve significant savings. Depending on the type and mix of documents being distributed, issuers can save several dollars per shareholder per delivery.

As stated above, a number of Mellon's clients already prepare electronic versions of their proxy materials and deliver those materials electronically to consenting shareholders. In Mellon's experience, the number of consenting shareholders has increased each year and currently stands at approximately 3% of eligible shareholders. Despite the increase, the overall number of consenting shareholders remains small. As a result of our experience servicing shareholders across a broad spectrum of issuers, we believe that this overall low acceptance rate of electronic delivery is largely due to inertia. Mellon's experience with obtaining shareholder consent for householding illustrates this point. Mellon estimates that issuers for whom Mellon has implemented householding have experienced shareholder acceptance rates above 90% when shareholders were required to affirmatively opt out of householding rather than indicate affirmative consent. This behavior demonstrates that a notice and access model is needed--if obtaining consents were a practical and efficient means of gathering shareholder preferences, the Commission's Proposal would not be such an important and needed innovation.

Communication with Beneficial Holders

While strongly supporting the Proposal for the effect it would have on improving shareholder communications and reducing the costs associated with distributing proxy materials, Mellon believes that the Proposal is not a substitute for addressing the problems inherent in the current process of communicating with street and nominee holders. These problems have been identified by the Business Roundtable in its Petition for Rulemaking Regarding Shareholder Communications, filed with the Commission on April 12, 2004 (http://www.sec.gov/rules/petitions/petn4-493.htm), the Society of Corporate Securities & Governance Professionals (formerly, the American Society of Corporate Secretaries) in its letter to the Commission dated April 30, 2004 (http://www.sec.gov/rules/petitions/4-493/ascs043004.pdf) in support of the Business Roundtable petition, and the Coalition formed by the Business Roundtable, the National Investor Relations Institute, the Securities Transfer Association and the Society of Corporate Secretaries & Corporate Governance Professionals, in their letter to the Commission dated July 29, 2005 (attached to the STA comment letter referred to above) urging the Commission to review the shareholder communications system.

The Proposal acknowledges the greater complexities associated with communicating with beneficial owners, but does little to address those complexities. Indeed, the Proposal leaves intact the NOBO/OBO system, which continues to impede issuers in effectively communicating with all of their shareholders.

Mellon believes that the Proposal helps to mitigate one of the problems caused by the NOBO/OBO system but should not be seen as a substitute for the need to take a broader look at the current system. For example, providing issuers with direct access to their beneficial owners and allowing issuers to designate their own agent or agents for delivering proxies and tabulating votes, would not only avoid the confusion and inefficiencies associated with intermediaries delivering their own Notices of Internet Availability and requests for voting instructions, but could also mitigate or even completely alleviate any over-voting issues. Mellon urges the Commission to address these matters as a whole.

Shareholder Access to Materials

The Commission's proposed "notice and access" model, which provides shareholders with notice of the availability of proxy materials and a simple means to request paper delivery, is more investor friendly than an "access equals delivery" model. By permitting investors to request a paper copy of the proxy materials, the "notice and access" model would seem to address the concerns of some commenters that shareholders would be unable to print or download large electronic files effectively. Shareholders who want a paper copy should be able to receive one within a week of a request. For the reasons described above, if the Proposal is adopted, Mellon believes that there would be very low rates of such paper disclosure requests, and we would be pleased to provide statistics to the Commission when available.

Electronic Proxy Cards

Although distributing proxy cards over the Internet for printout by the shareholder would be permitted by the Proposal, Mellon believes that issuers and their agents are unlikely to employ such proxy cards. We anticipate that traditional proxy cards will most likely be delivered together with the Notice of Internet Availability. Mellon and other large transfer agents have automated processes for scanning physical proxy cards. Scanable proxy cards must be bar coded and machine-readable. Cards printed off the Internet or from an e-mail would not likely be machine-readable because of their variable size, paper stock and irregular formatting, and would likely need to be processed manually. Manual processing would add very significant costs to the proxy tabulation process.

Other Issues

With respect to certain other questions presented in the Proposal, we hope the following responses may be helpful to the Commission:

Q – Do shareholders need broadband technology to efficiently download lengthy documents such as annual reports, proxy statements, and information statements?
A – There are compression technologies available to issuers that enable Internet users with dial-up and low-speed bandwidth connections to access and download lengthy documents while preserving their original graphics. Documents that could take up to 10 or more megabytes of storage space can be compressed and delivered in a storage space as small as 3 kilobytes. Mellon does not believe that requiring the use of such compression technologies would be unduly burdensome for issuers wishing to avail themselves of electronic delivery.

Q – Would the proposed 30-day period achieve the objective of providing sufficient time for a shareholder to request a copy of the proxy materials, if desired, and to review the materials prior to voting?
A – Mellon believes that 30 days is an adequate amount of time to provide notice to shareholders of the availability of proxy materials. With a required 48-hour turn-around on requests for paper copies, shareholders should have ample time to request paper copies and review those copies in time to vote before a meeting.

Q – Should we permit the Notice to include a request for the shareholder's affirmative consent to future electronic delivery of the Notice?
A – Yes. Shareholders should be able to continue to receive all communications materials electronically, including the Notice of Internet Availability, if they so choose. The alternative would be to require paper mailings where none is required today--a step backward for this growing category of investors.

Q – Would it be more appropriate to require that the proxy card always be furnished together with and through the same delivery means as the Schedule 14A proxy statement and the annual report to shareholders?
A – No. As discussed above, Mellon believes that issuers and agents will not employ printable electronic proxy cards at the present time. Requiring that the proxy card always be furnished through the same delivery means as the Schedule 14A proxy statement and the annual report to shareholders would mean that such documents would be delivered in paper form.

Conclusion

Mellon believes that the proposed amendments would provide issuers with an efficient means to deliver proxy materials to shareholders. While Mellon strongly supports the Proposal, we believe it is not a substitute for addressing the broader need to update the beneficial shareholder communication system. Some of the issues noted in the Proposal would be addressed by a more transparent system of shareholder communications, pursuant to which issuers could communicate directly with their shareholders.

We thank you for the opportunity to comment on the Proposal and hope these comments have been helpful. We would be happy to discuss with you any questions you may have about these comments.

Very truly yours,

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