

CORPORATE AND SECURITIES LAW

Alert

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

SEC Releases Proposed Amendments to E-Proxy Rules

October 29, 2009

On October 14, 2009, the Securities and Exchange Commission (SEC) proposed amendments to the proxy rules under the Securities and Exchange Act of 1934, as amended, with the purpose of improving certain aspects of the notice and access method for furnishing proxy materials to shareholders. Currently, the SEC permits issuers to deliver proxy materials to shareholders through two methods—(i) full set delivery, which means that an issuer sends a full paper set of the proxy materials to its shareholders along with posting the proxy materials on the internet; and (ii) notice and access, which allows the issuer to provide notice of internet availability of its proxy materials to its shareholders. Although the notice and access method was originally created to take advantage of widespread internet availability and to lower the costs of proxy solicitation, studies have indicated that the notice and access method has resulted in lower response rates from investors as compared to the full set delivery model. The proposed amendments aim to modify certain aspects of the notice and access method in an effort to increase investor response. Additionally, the SEC has proposed to modify the timeframe for delivery of notice by persons soliciting proxies other than the issuer.

Summary of Proposed Amendments

The proposed rule changes are as follows:

- *Improving Clarity of the Notice.* Currently, the notice and access method imposes rigid requirements on the content and display of the notice of internet availability of proxy materials. For example, at this time the notice (i) may only present the matters to be voted on at the shareholders' meeting (in a format that mirrors the proxy card) and the issuer's recommendation on such matters, (ii) must explain how to receive a paper copy of the proxy materials and (iii) must contain a boilerplate legend regarding internet availability of proxy materials. Under the proposed amendments, issuers would be allowed to include explanatory information regarding the importance and effect of the notice and would have additional latitude regarding the explanation of the upcoming meeting and the presentation of the information on the notice.
- *Proposed Amendment to Notice Deadlines for Soliciting Persons Other Than the Issuer.* Currently, a person other than the issuer soliciting proxies and using the notice and access method must send their notice before the later of 40 days prior to the shareholders' meeting or 10 days after the issuer first sends its notice or proxy statement to shareholders. Under the proposed amendment, a soliciting person other than the issuer would be required to file its preliminary proxy statement within 10 days after the issuer files its definitive proxy statement and would allow the soliciting person to send its notice of internet availability as late as the date on which the soliciting person files its definitive

proxy statement with the SEC. The proposed amendment is designed to enable a soliciting person other than the issuer to take advantage of the notice and access model, while at the same time allowing the SEC enough time to review the soliciting person's proxy materials.

A 30-day comment period is currently open with respect to the proposed changes and we encourage our clients to continue to monitor the developments related to e-proxy in preparation for the upcoming proxy season.

Bass, Berry & Sims PLC's Periodic and Current Reporting Subgroup monitors and advises on developments in SEC reporting, including quarterly, annual and current SEC reports and proxy statement disclosures as well as XBRL compliance. If you have any questions regarding the issues addressed in this Corporate and Securities Law Advisory or if you would like to set up a meeting with us and your management team or board of directors regarding these developments, please feel free to contact your regular contacts in our Corporate and Securities Group or any of the attorneys in our Subgroup listed below.

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Bass, Berry & Sims PLC Corporate and Securities Group

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