

June 20, 2007

SEC Adopts Universal E-Proxy Requirements and Amendments to Rule 105 of Reg. M

At today's open meeting, the SEC unanimously approved, among other items, (i) the adoption of the "mandatory" or "universal" notice-and-access model of proxy distribution (commonly known as "e-proxy"), (ii) the adoption of amendments to Rule 105 of Regulation M to prohibit abusive short selling in the context of public offerings and (iii) the proposal of rule amendments to allow foreign private issuers to use in their SEC filings financial statements prepared in accordance with the English version of International Financial Reporting Standards as published by the International Accounting Standards Board without reconciliation to U.S. GAAP. We summarize the actions taken with respect to items (i) and (ii) below and will summarize the actions taken with respect to item (iii) in a separate memorandum.

Mandatory E-Proxy Requirements

Earlier this year, the SEC adopted voluntary e-proxy requirements pursuant to which public companies and other soliciting persons could choose to use a "notice-and-access" method of proxy distribution to satisfy the SEC's rules regarding the furnishing of proxy materials (other than in the context of business combinations) by giving shareholders notice of the Internet availability of, and online access to, the materials. Although this voluntary model is not effective until July 1, 2007 (the first date that notices of Internet availability may be sent), the SEC has proceeded to adopt the mandatory version of these rules.

The only significant difference between the new mandatory model and the current voluntary model is that under the new rules, companies and soliciting persons must offer the notice-and-access method of distribution for all proxy solicitations (other than with respect to business combinations). As with the voluntary model, shareholders may opt out by requesting paper or e-mail copies of proxy materials from the company, soliciting person or their intermediary, as appropriate. Similarly, although companies and soliciting persons must offer a notice-and-access process, they could additionally continue to send paper copies of proxy materials, if they so choose, because of state law conflicts or otherwise. The SEC has recently become aware of possible conflicts between these e-proxy rules and state law (e.g., California state law) and is considering this issue. Also, the SEC intends to monitor closely the implementation of the e-proxy model in the coming year to see whether any adjustments are needed.

1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

1615 L Street, NW
Washington, DC 20036-5694
(202) 223-7300

Alder Castle, 10 Noble Street
London EC2V 7JU England
(44-20) 7367 1600

Fukoku Seimei Building 2nd Floor
2-2, Uchisawaicho 2-chome
Chiyoda-ku, Tokyo 100-001, Japan
(81-3) 3597-8101

Unit 3601, Fortune Plaza Office Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
People's Republic of China
(86-10) 5828-6300

12th Fl., Hong Kong Club Building
3A Chater Road, Central
Hong Kong
(852) 2536-9933

The mandatory e-proxy model is effective for large accelerated filers (other than registered investment companies) beginning January 1, 2008, and for all other companies and soliciting persons other than the issuer beginning January 1, 2009. For more detail on the notice-and-access process, please see our memorandum on the voluntary e-proxy requirements at www.paulweiss.com (or by [clicking here](#)).

Rule 105 of Regulation M

The SEC is adopting amendments to Rule 105 of Regulation M to make it unlawful for a person to sell short an equity security during the Rule 105 restricted period and then receive an allocation in the public offering of the same security. The final rules are being adopted substantially as proposed in December 2006, with a few significant changes:

- Under the final rules, persons who sell short during the restricted period may still participate in the public offering if they make a “bona fide” purchase of the same securities before the offering prices. Whether a purchase is bona fide will depend on meeting conditions designed to ensure transparency of the purchase and provide time for the effects of the restricted period short sales to dissipate and for market reaction to the purchase.
- The final rules include exceptions to Rule 105 for registered investment companies and other related accounts that make investment and trading decisions separate from those of the short seller and without any coordination between the accounts.
- The final rules clarify that Rule 105 applies only to the offering of equity securities and to short sales of securities that are the subject of the distribution.

The new rules will be effective 60 days after their publication in the Federal Register.

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Please note that the above is based on oral discussions from today’s open meeting, and the exact wording of the final rules will not be known until they are published. This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum may be directed to any of the following:

Mark S. Bergman	(44 20) 7367 1601	Raphael M. Russo	(212) 373-3309
Richard S. Borisoff	(212) 373-3153	Robert B. Schumer	(212) 373-3097
Andrew J. Foley	(212) 373-3078	Lawrence G. Wee	(212) 373-3052
Paul D. Ginsberg	(212) 373-3131	Tong Yu	(813) 3597 6303
John C. Kennedy	(212) 373-3025	Valérie Demont	(212) 373-3076
Edwin S. Maynard	(212) 373-3024	Frances F. Mi	(212) 373-3185
Toby S. Myerson	(212) 373-3033	Gábor Molnár	(44 20) 7367 1605