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MEMORANDUM

TO: Our Clients and Friends

FROM: Silver, Freedman & Taff, L.L.P.

DATE: December 2007

RE: SEC E-Proxy Rules

The Securities and Exchange Commission has adopted rules that will require all public companies to make their proxy materials available via the internet beginning with solicitations starting January 1, 2008, in the case of large accelerated filers (i.e., companies with a public float of \$700 million or more), and January 1, 2009, in the case of all other companies. Voluntary compliance before the applicable effective date is permitted. The new rules do not apply to solicitations in connection with mergers and acquisitions.

Under the new rules, you must post your proxy materials (i.e., proxy statement, proxy card and annual report, in the case of an annual meeting) to a website (other than the SEC's website) and notify your shareholders of the availability of the materials. You have the choice of (1) continuing to provide shareholders with a full paper set of the proxy materials and either including the notice of internet availability as a stand-alone document in the full set mailing or incorporating it into the proxy statement (this choice is referred to as the **"Full Set Delivery Option"**), or (2) not mailing shareholders paper copies of the proxy materials and instead simply mailing them a notice of the internet availability of the proxy materials (this choice is referred to as the **"Notice Only Option"**). These two options can be combined, using the Notice Only Option for some shareholders (for example, those holding more than a specified number of shares) and the Full Set Delivery Option for others. Whichever option or combination you choose for one meeting does not bind you for future meetings.

What does the Notice Only Option entail?

Mailing of the Notice. Under the Notice Only Option, you must mail a notice to your shareholders no later than 40 calendar days before the date of the shareholders' meeting (not counting the meeting day), alerting them to the internet availability of your proxy materials. At the time this notice is mailed, the proxy materials must be complete and posted to the website

(see “What are the website requirements?” below). The notice must be filed with the SEC on or before the date it is first mailed to shareholders. So-called “intermediaries” (i.e., Broadridge, formerly known as ADP) responsible for disseminating proxy materials to “street name” shareholders, must also mail a notice of the internet availability of your proxy materials no later than 40 days before the meeting date. The notice must be written in plain English and contain the following information:

- the date, time and place of the meeting;
- a prominent, bold-face legend with prescribed language indicating that your proxy materials are available on the internet and giving the website address, and that a shareholder can request free paper or e-mail copies and the manner in which they may do so, including the date by which their request should be made to facilitate delivery before the meeting (a pre-addressed, postage-paid reply card for requesting paper copies may be enclosed with the notice mailing);
- a clear and impartial identification of each matter to be voted on, and, if you so desire, your recommendations on how shareholders should vote;
- a list of the materials available on the website (e.g., proxy statement, proxy card and annual report);
- a toll-free telephone number, an e-mail address and an internet website address where a shareholder can request copies of the proxy materials for the upcoming meeting and all future meetings;
- instructions on how to access the proxy card, provided that the instructions do not enable a shareholder to execute a proxy without having access to the proxy statement;
- any control/identification number the shareholder needs to access his or her proxy card; and
- information about attending the shareholder meeting and voting in person.

The notice may also contain any information required by state law, as well as a protective warning advising shareholders that no information other than the identification or control number is necessary to execute a proxy.

Proxy Voting Mechanism in Place. You must provide shareholders with a means of executing proxies at the time the notice is first mailed to shareholders. This could include an internet voting platform, a toll-free telephone number for voting and/or a printable proxy card on the website. If telephonic voting is to be available, the telephone number may appear on the website but not the notice, because this would enable a shareholder to execute a proxy without having access to the proxy statement. Importantly, a proxy card may not be included with the initial mailing of the notice; proxy cards may be mailed no sooner than ten calendar days after the initial mailing of the notice unless they are accompanied by full paper copies of the proxy materials.

Paper or E-mail Copies Upon Request. As indicated above, you must provide free paper or e-mail copies of proxy materials to shareholders upon request for up to one year after the shareholders' meeting to which the materials relate. If you receive the request for materials before the meeting, they must be sent within three business days (by first class mail or "other reasonably prompt means," if a paper copy is requested). There is no required response time for requests received after the meeting. You must also allow shareholders to make a permanent election to receive paper or e-mail copies in connection with future meetings, and maintain records of those elections.

Timing Considerations. As noted above, you (or your transfer agent) must mail the notice of internet availability of the proxy materials to record holders, and Broadridge must mail its own notice to "street name" holders (which is similar, but not identical, to the record holder notice), no later than the 40th calendar day before the date of the meeting, not counting the day of the meeting. Based on our recent discussions with Broadridge, to ensure that their notice is timely sent to "street name" holders, you should provide Broadridge with the information it will need to put in its notice at least two weeks before the notice mailing date. Because this is a new process for all parties involved, glitches and other delays are likely to occur. Therefore, we recommend that if you wish to use the Notice Only Option, you plan to complete and post your proxy materials and mail the notice to shareholders at least 45 days before the date of the meeting. Because this may require a record date that is further in advance of the meeting date than in years past, your bylaws and state law should be checked to ensure that the record date you have selected does not go beyond the maximum number of days permitted before the meeting.

What does the Full Set Delivery Option entail?

Under this option, you mail a full paper set of proxy materials to your shareholders, just as you have done in the past. While you are also required to provide shareholders with notice of the internet availability of the proxy materials, the notice can either be incorporated into the proxy statement or included with the proxy material mailing as a stand-alone document. The notice required under the Full Set Delivery Option is similar to the notice used under the Notice Only Option. Perhaps most importantly, the 40-day notice requirement of the Notice Only Option does not apply to the Full Set Delivery Option. Under the Full Set Delivery Option, you can mail paper copies of your proxy materials under the same time frame you have used in the past (typically 30-35 days before the meeting). The requirement of the Notice Only Option to provide additional paper or e-mail copies to shareholders upon their request does not apply under the Full Set Delivery Option. Under the Full Set Delivery Option, you must post your proxy materials to the website by the time you mail the materials to shareholders.

What are the main advantages and disadvantages of the two options?

Notice Only Option – Advantages:

- You avoid the expense of printing and mailing a full set of proxy materials to every shareholder. These savings may be offset, at least in part, by potential costs of the Notice Only Option, as described below.

Notice Only Option – Disadvantages:

- You must complete and post your proxy materials no later than 40 days before the meeting date; to allow a sufficient time cushion and adequate coordination with Broadridge for the mailing of its notice to “street name” holders, at least 45 days is recommended.
- It is impossible to predict (at least for the first year) how many shareholders will request paper copies, so you need to print at least some quantity of materials. If you use a third party, such as your transfer agent or Broadridge, to “warehouse” paper copies and process document requests, you will incur additional expense for these services.
- You still have the expense of mailing the notice of internet availability of proxy materials to all shareholders.
- Some shareholders may be annoyed or upset by not receiving paper copies. If you have a significant percentage of shareholders whom you believe would prefer printed materials (such as small retail or local shareholders), it may be advisable to use the Full Set Delivery Option, at least for these holders.
- The inability to include a proxy card with the initial mailing of the notice could result in a decline in shareholder voting participation, as some shareholders may be less inclined to vote if they are required to first access proxy materials online or request paper copies. If you want to mail a proxy card to shareholders, you will incur the expense of a second mailing. If a high level of shareholder participation is critical to passage of a particular proposal, this may weigh in favor of using the Full Set Delivery Option.
- You must make a voting mechanism available other than the printed proxy card, because you cannot include a proxy card with the initial mailing of the notice. This may result in additional expense.
- Because the Notice Only Option is still a relatively new process, there may be some advantage to waiting at least a year before choosing it, to hopefully allow for any glitches in the system to be identified and eliminated and to see how well it works in practice for other companies.

Full Set Delivery Option – Advantages:

- Not subject to the 40-day rule of the Notice Only Option - you can print and mail your proxy materials under the same time frame as in the past.
- The number of copies to print would be predictable, as you need not provide additional copies under Full Set Delivery Option.
- You can include a proxy card with the initial mailing and need not provide alternative voting mechanisms.

- Some shareholders may want paper copies of the proxy materials and could view the need to request these materials under the Notice Only Option as a hassle or inconvenience.

Full Set Delivery Option – Disadvantages:

- You incur the cost of printing and mailing a full set of proxy materials for every shareholder.
- Because of the perception of potential cost savings foregone, some shareholders may criticize you for not using the Notice Only Option.

What are the website requirements?

Regardless of whether you elect the Notice Only Option, the Full Set Delivery Option or a combination of the two, you must post your proxy materials to a publicly accessible website other than the SEC's website, and must keep the materials there through the conclusion of the shareholders' meeting. Key requirements for the website are:

- The website address must be specific enough to lead shareholders directly to the proxy materials, rather than to a home page or other section that requires browsing to find the materials. The website can be a central site with prominent links to each of the documents.
- The materials must be in a format convenient for both reading online and printing. Although not specifically required, the SEC suggests that providing two different formats – such as PDF for ease of printing and HTML for ease of reading online and searching – may be necessary based on existing software technology.
- If a shareholder needs additional software to view a document, the website must contain a link to enable the shareholder to download the software free of charge.
- The website must be maintained in a manner that does not infringe on the anonymity of the person accessing the website (i.e., cookie-free).
- You may not use any e-mail address provided by a shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to the shareholder. You also may not disclose a shareholder's e-mail address to any person, except to an employee or agent to the extent necessary to facilitate delivery of copies of proxy materials requested by the shareholder.

While you are free to use your own website for the required posting of proxy materials, a number of vendors offer this service. We encourage you to determine early on in the process whether you have the capability or desire to maintain the proxy materials on your own website or if you will need or want to use a third party.

How do the new rules apply to soliciting persons other than the company?

Soliciting persons other than the company, such as a dissident shareholder waging a proxy contest, are required to follow the new rules for solicitations commencing on or after January 1, 2009, but may voluntarily comply before that date. Like the company, a soliciting person may use the Notice Only Option, the Full Set Delivery Option or a combination of the two, and is not required to follow the company's election. Unlike the company, a soliciting person is not required to solicit every shareholder – the soliciting person may select the specific shareholders from whom he or she wishes to solicit proxies. If the soliciting person chooses the Notice Only Option, the soliciting person must send the notice of internet availability of the soliciting person's proxy materials by the later of the 40th calendar day before the shareholders' meeting date or the tenth calendar day after the date that the company first sends its proxy materials or notice of internet availability of proxy materials to shareholders. The ability of dissident shareholders to use the Notice Only Option is expected to make it easier and less expensive for them to run proxy contests.

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This memorandum provides a general overview and should not be used or taken as legal advice. The new SEC rules discussed in this memorandum are complex, and we encourage you to contact us with any questions you may have.