White Paper

Decision Point

Notice and Access Decision Point:

Planning for a Successful Proxy Process Under the New Rules

Merrill's 2007 Notice and Access Series

MERRILL CORPORATION

In the past year, the Securities and Exchange Commission ("SEC") has instituted sweeping changes that will require all public companies to post their proxy materials on the Internet within the next year to 18 months. The final rule, known as "Shareholder Choice Regarding Proxy Materials," was adopted on July 26, 2007 and as a result many public filers are just beginning to evaluate their options. With deadlines fast approaching, most companies now face a decision point that will have a potentially significant impact on their shareholder communication strategy. This white paper outlines the key factors that corporate decision makers need to analyze as they plan for compliance with the new ruling.

In less than 18 months, all public companies will need to review their overall proxy process to comply with the new requirements.

At this point, the SEC is giving companies the option of voluntarily adopting the Notice and Access model. Most companies that are currently eligible to participate have declined to do so. To date, only a small percentage of public companies have actually filed using the new Notice and Access model.

However, effective January 1, 2008, compliance will be required for all Large Accelerated Filers, excluding registered investment companies. By January 1, 2009, all filers, including registered investment companies, must comply.

What is the best way to implement this new requirement? How will the rules change a company's existing proxy process? What are the risks and the benefits? Through interviews with hundreds of public companies, as well as discussions with service providers and legal professionals, Merrill Corporation has researched how the first wave of Large Accelerated Filers intends to comply with the new rules. In this paper, we outline the three primary options and the benefits and risks of each approach.

Our objective is to help our clients and other companies evaluate their options and select the approach that best meets their needs and those of their shareholders.

I. The Notice and Access Model: Internet Availability of Proxy Materials

Earlier this year, the SEC adopted the "Notice and Access" model, a new mandate that requires companies to furnish proxy materials to shareholders by posting them on a Web site, as well as notifying shareholders of the electronic availability of the proxy materials. The changes are part of the SEC's ongoing efforts to modernize its rules and bring new efficiencies and cost savings to companies while also safeguarding the interests of investors. The SEC's approach gives corporate decision makers time to reflect on the best way to implement the Notice and Access model as part of their overall compliance and stakeholder communication strategy.

The new ruling allows companies to select among several delivery options, including the traditional delivery of paper proxy materials. Critical factors to consider include the size and demographics of the shareholder base, the timing of the proxy solicitation, the potential impact on attaining a quorum, the company's current proxy process and its corporate image. This white paper reviews the implications of the new ruling and provides guidelines to help companies evaluate their options.

Definition of the Notice and Access Model Final Rule: Shareholder Choice Regarding Proxy Materials Securities and Exchange Commission; 17 CFR PART 240

The SEC has adopted a new "Shareholder Choice" model for delivery of proxy materials. This is a slight deviation from the Notice and Access model as originally proposed and allows issuers to follow a "Notice Only" model or a "Full Set Delivery" option. Regardless of which method is chosen, under these rules, an issuer is required to post its proxy materials on a specified, publicly-accessible Internet Web site (other than the SEC's EDGAR Web site) and provide record holders with notice informing them that the materials are available and explaining how to access those materials.

Under the Notice Only option, the issuer must send a Notice to shareholders at least 40 calendar days before the shareholder meeting date, or if no meeting is to be held, at least 40 calendar days before the date that votes, consents or authorizations may be used to effect a corporate action, indicating that the issuer's proxy materials are available on a specified Internet Web site and explaining how to access those proxy materials. Issuers may household the Notice pursuant to Rule 14a-3(e).

Under the Full Set Delivery option, the issuer can deliver a full set of proxy materials along with the Notice which can be included in the proxy materials themselves. In such case, the 40-day notice requirement does not apply. An issuer does not have to use one or the other option exclusively.

Contents of the Notice of Internet Availability of Proxy Materials

The Notice must contain the following information:

- A prominent legend in bold-face type that states:
  - **"Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].**
  - **This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.**
  - **The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].**
  - **If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [insert a date] to facilitate timely delivery." [Not required in the "Full Set Delivery" option.]**
- The date, time and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on, and the issuer's recommendations, if any, regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site;
- (1) A toll-free telephone number; (2) an e-mail address; and
- (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;
- Any control/identification numbers the shareholder needs to access his or her proxy card;
- Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement; and
- Information about attending the shareholder meeting and voting in person.

The Notice must be written in plain English. The Notice may contain only the information specified by the rules and any other information required by state law, if the issuer chooses to combine the Notice with any shareholder meeting notice that state law may require. However, the Notice may contain a protective warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy. In addition, a registered investment company may send its prospectus and/or report to shareholders together with the Notice. The issuer must file its Notice with the Commission pursuant to Rule 14a-6(b) no later than the date that it first sends the Notice to shareholders. For more detailed information on the Notice and Access model, please refer to the SEC's final ruling document, available on the Web at: http://www.sec.gov/rules/final/2007/34-56135.pdf

II. Compliance Options

The Notice and Access model (sometimes also called the e-proxy model) is not a "one size fits all" program. While the SEC has created a set of requirements, companies have some flexibility in deciding how to comply with them. In the new rules, the SEC gives companies three primary choices:

- Notice Only
- Full Set Delivery
- Stratified

A definition of each option follows.

In the Notice Only option, electronic proxy materials become the default and paper proxy materials are provided only to those shareholders who request them.

Notice Only

Under the "Notice Only" option, companies will follow the Notice and Access model exactly as laid out by the SEC. This means that electronic proxy materials become the default and paper proxy materials are provided only to those shareholders who request them.

The new rule requires that the proxy notice be mailed at least 40 calendar days before a company's annual meeting. Shareholder requests for printed materials must be fulfilled within three business days of receiving the request (and sent via first class mail). Permanent requests for printed materials must also be honored. As a consequence, all proxy materials, including the notice, must be filed with the SEC, printed and be made ready to fulfill shareholder paper requests, and posted in formats that are both print-ready and viewable online on a non-SEC Web site at the time of the notice mailings. The 40 calendar day requirement may put a strain on companies who have historically conducted these actions 20-30 days before their annual meetings.

Checklist

Companies who are planning to use the Notice Only option will have to complete the following actions related to the 10-K, notice, proxy statement and proxy card at least 40 days before the annual meeting:

- ☐ All documents must be filed with the SEC.
- ☐ They must be posted in print-ready and online viewable formats on a non-SEC EDGAR Web site.
- ☐ The Notice must be printed and ready to mail.
- ☐ The annual report, proxy statement and proxy card must be printed to fulfill those shareholders who have previously requested paper, or who immediately notify their respective agents of their desire to receive paper copies.

The Notice Only option enables companies to be in full compliance with the SEC rules by delivering proxy materials to shareholders according to the shareholder's preference. Since it is no longer necessary to print and mail proxy materials to every shareholder, many companies will experience a reduction in print and mail costs. The SEC anticipates that electronic delivery will also enhance shareholder communications in the following ways:

- Increase the efficiency of the shareholder communication process.
- Permit technology to enhance the shareholder's experience.
- Improve shareholder communications, which may also improve relationships between shareholders and management.
- Provide investors with easier access to materials.
- Make it easier for investors to look up information, since electronic documents are more searchable than paper.
- Make it easier for investors to evaluate data.

Current electronic documents, in formats such as PDF and HTML, can provide some of these benefits, but XBRL (eXtensible Business Reporting Language), which Merrill believes will be mandated by the SEC in the future, will certainly assist in achieving the above stated benefits. For more information on XBRL, go to www.merrillcorp.com/cps/rde/xbcr/SID53E1EF62A29F5BA9/merrillcorp/TCS_XBRLTopTen.pdf

Full Set Delivery

Under the "Full Set Delivery" option, companies will provide a full set of printed proxy materials to all shareholders, as they have done traditionally. Additionally:

- Electronic versions of the proxy materials must be posted on a non-SEC Web site in formats conducive to printing (such as PDFs) and also viewable online (such as HTML).
- Companies must provide the Notice to shareholders directing them to the Web site where the electronic documents reside. This notice may be provided as a separate document or included in the proxy statement.
- The aforementioned 40-day requirement is not applicable for this option.
- The three-day response for shareholders requesting printed proxy materials does not apply, as all shareholders receive printed copies in the initial mailing.

The Full Set Delivery option enables companies to comply with the SEC ruling while continuing to follow their existing shareholder communication program and avoid the risk that shareholders may not retrieve their material from the Web.

The Full Set Delivery option enables companies to comply with the SEC ruling while continuing to follow their existing shareholder communication program. Under this option, companies avoid the risk that shareholders may not retrieve their material from the Web. This conservative approach also yields the most accurate prediction of shareholder voting responses based on historical behavior.

Stratified

Under the "Stratified" or "Notice Only with Targeted Mailing" option, companies can take advantage of the electronic delivery offered via the Notice Only option and mail printed proxy materials to select shareholder segments. Such companies may stratify their shareholder base by different factors they deem relevant. For example, a company may choose to send full sets of printed proxy materials to their largest shareholders or all shareholders that previously voted.

The Stratified option allows companies to retain many of the benefits of the Full Set Delivery option but eliminates the potential risks associated with the Notice Only option.

In the Stratified option, companies must comply with all of the Notice Only requirements:

- The delivery of the Notice and proper Web posting must still take place at least 40 calendar days before the meeting.
- Shareholder requests for printed materials must be fulfilled within three business days of receiving the request.
- Permanent requests for printed materials must be honored.

This option allows companies to retain many of the benefits of the Full Set Delivery option but eliminates the potential risks associated with the Notice Only option.

It should be noted that the transfer agent or intermediary may charge additional fees to segment the shareholder database.

III. Factors to Consider Before Implementation

What is the best option for your company? There is no simple answer. As a first step, companies are advised to perform a full audit of their existing shareholder communication strategies to clarify their current and future goals, as well as their readiness to transition to the Notice and Access model.

To assist with this evaluation, Merrill has, with the benefit of extensive research and client interviews, created the **Merrill Notice and Access Audit Program™**. This audit process will help you create a Notice and Access program to best fit your company's needs. Companies interested in the **Notice and Access Audit Program** should contact their Merrill representative.

Call your Merrill representative to schedule a Notice and Access Audit to help you decide how to comply.

During the Notice and Access Audit, we will help you evaluate the principal factors to consider in making your company's decision about how to comply with the ruling, which include:

- Timing.
- Stakeholder communication strategy.
- Specific proxy dynamics.
- Risk of ensuring a quorum.
- Potential cost savings.
- Environmental impact.

A discussion of each factor follows.

Timing

Under the Notice and Access model, both the Notice Only option and the Stratified option require that the proxy notice be mailed at least 40 calendar days before a company's annual meeting. Companies need to assess their ability to meet this time constraint. If it is an issue, the Full Set Delivery option, in which the 40-day requirement is waived, presents the best option.

Stakeholder Communication Strategy

One important aspect of the Notice and Access model is its perceived future impact on shareholder communications. Many companies are concerned that their shareholders will not go online to read proxy materials or vote, resulting in decreased participation at the annual meeting.

An overwhelming number of companies interviewed for the National Investor Relations Institute (NIRI) Annual Report Survey (August 2006) reported that their annual meeting is the most important stakeholder communication event of the year. This was reinforced by Merrill's research of more than 400 companies in late spring of 2007.

Companies view the annual meeting as the optimal time to provide shareholders with:

- A thorough update on the company's progress from the prior year.
- Non-financial value drivers and corporate strategies.
- Information on changes in strategy or significant upcoming challenges, milestones or events.
- A display of new products and services.
- Messaging reinforcing the company's brand.
- Changes in management and corporate structure.

As the SEC's final ruling was published in July 2007, Large Accelerated Filers must now begin to examine their options in preparation for their next annual meeting. Under the Notice and Access rule, companies will need to decide which model of document fulfillment best fits their overall strategy.

In making that decision, a company will also want to consider the current and future status of its annual report. While the number of companies printing a full-color, glossy annual report has significantly declined during the last ten years, most companies still provide stakeholders with some form of a report (such as a 10-K wrap) that presents key information beyond the financial disclosure requirements of Rule 14a-3. Historically, by printing and mailing these documents directly to shareholders, companies were assured that their carefully crafted message was delivered.

Going forward, many companies are concerned that providing electronic access to documents will be a less effective means of communicating key messages to shareholders. As a result, companies will need to consider both the composition of their shareholder base and their desired corporate image. For example, shareholders of a high-technology company may tend to be more "computer savvy" and expect to receive electronic, rather than paper shareholder communications.

Specific Proxy Dynamics

Anytime a company is facing a potential proxy contest, activist shareholders or non-routine agenda items, proxy solicitation experts emphasize the importance of waging a campaign of continuous communication with shareholders. The frequent, repetitive delivery of communications in the form of printed documents can aid companies in their efforts to obtain the necessary votes. Experts strongly recommend these companies select the Full Set Delivery option and mail paper proxy materials to all shareholders.

Risk of Ensuring a Quorum

For certain companies, no factor in evaluating the Notice and Access model is more important than its potential impact on shareholder voting.

For certain companies, no factor in the evaluation of their Notice and Access options is more important than the potential impact on shareholder voting. Many believe that the Notice Only approach and its use of the Internet to deliver communications will cause a decrease in voter participation. Should this occur, companies will need to take additional, costly steps to reach shareholders, such as hiring a proxy solicitation firm or launching additional communication campaigns.

When shareholder participation is a concern, companies adopting the Notice Only model may choose to send out a second notice with the proxy card ten or more days after the first notice is sent. This approach will remind voters where to access materials and provide them with a printed proxy card or Voter Instruction Form (VIF). It will also increase costs.

Experts recommend that companies concerned with ensuring a quorum should select the Full Set Delivery option and mail paper proxy materials to all shareholders.

Potential Cost Savings

Many companies may see the Notice and Access model as an opportunity to reduce costs, and indeed, cost savings is a possibility in some circumstances. To perform a full cost analysis, a broad range of expenses should be considered, including:

- Printing and freight
- Postage
- **New** Notice and Access costs

Printing and Freight

Most of the cost for print runs under 100,000 typically occurs in the writing, design, layout, typography, EDGAR/HTML coding, filing and pre-press work. All of these expenses will still be incurred, regardless of print quantity.

The SEC has suggested that approximately 19% of shareholders will prefer printed proxy materials. Using this estimate as a basis for calculation, Merrill's research shows that companies with proxy print quantities of 100,000 or greater will realize significant print cost savings if they opt for the Notice Only option. For companies with fewer than 100,000 shareholders, the analysis becomes more complicated. This is due to the unique size and characteristics of each proxy statement and annual report.

The actual cost of operating a printing press is only one component of the total expense. Most of the cost for print runs under 100,000 typically occurs in the writing, design, layout, typography, EDGAR/HTML coding, filing and pre-press work. All of these expenses will still be incurred, regardless of print quantity. Thus for press runs under 100,000, the savings will be significantly less than some companies might anticipate.

For guidance, consider the following analysis of a sample proxy statement, keeping in mind that page counts, press speeds and equipment differences are all variable:

- For 100,000 copies of a 24-48 page Notice and Proxy Statement, reducing the run to 19% (19,000 copies) might yield **print** savings of approximately $10,000.
- For 10,000 copies of a 24-48 page Notice and Proxy Statement, reducing the run to 19% (1,900 copies) might yield **print** savings of approximately $1,200.

Analysis also needs to be performed for a company's annual report production. However, given the number of unique elements involved in each company's annual report, we cannot estimate these savings in this white paper. The savings magnitude could exceed those outlined in the example above.

When considering the cost of a print run, it is generally prudent to print 5% to 10% more copies than are strictly required, to avoid potential reprinting expense after the initial press run. Merrill can assist companies in their review of actual print costs based on their circumstances.

Another opportunity for print cost savings under the Notice Only option exists because the VIF and proxy cards that accompany the full set today will no longer be produced for the initial mailing. However, any potential print savings from the elimination of these items will be virtually offset by the cost to print the Notice, with additional costs for any reminder mailings to shareholders.

Freight charges to deliver proxy materials to fulfillment centers are an additional area of potential savings, due to reduced quantities of printed material. However, all end delivery points most likely will remain the same, so only deliveries with significantly reduced weights will see meaningful freight savings.

Postage represents the greatest savings opportunity under the new rules.

Postage

Postage represents the greatest savings opportunity under the new rules. If companies elect the Notice Only option, the postage for mailing the Notice will be reduced significantly on a per piece basis as compared to mailing the full set of proxy materials. For companies with a large shareholder base, this savings will be substantial. The following example is based on the inclusion of a 72-page annual report, a proxy card, return envelope, a 36-page proxy statement and an envelope or polybag:

- For 100,000 copies of a 12-ounce mailing, reducing the run to 19%, or 19,000 copies, might yield initial **mail** savings of approximately $35,000.
- For 10,000 copies of a 12-ounce mailing, reducing the run to 1,900 copies might yield initial **mail** savings of approximately $3,500.

These initial savings will be partially offset by mail fulfillment requirements prior to the annual meeting. Shareholder requests for full delivery of materials that arrive after the initial mailing will be fulfilled by first class mail or an equivalent service. These costs do not include any fulfillment or mailing labor charges from intermediaries or transfer agents. These fees may be bundled with other management fees, but could cost several thousand dollars each year.

New Notice and Access Cost Buckets

By selecting the Notice and Access model, companies should be aware of other costs they may incur.

- **New processing fees.** Companies need to anticipate new fees from intermediaries and transfer agents when choosing the Notice and Access model. These fees are in addition to the fees associated with the traditional model.
- **Fulfillment of paper requests after the Notice mailing.** Under the Notice and Access model, companies should plan for additional charges to respond to shareholder requests for paper. In addition to extra postage, companies should assume that if hundreds of shareholders request materials after the initial mailing, additional charges will be incurred for fulfillment labor or order fees. These fees may amount to thousands of dollars annually. In addition, a warehousing fee is typically charged. If a company does not opt to hold copies in storage, print on demand charges for additional sets of materials can range from a few hundred dollars to more than $1,000. Companies should check with their transfer agent and intermediaries regarding these costs.
- **Creation of more sophisticated electronic documents.** As online documents become more prevalent than paper documents, companies may choose to invest in a more sophisticated online presentation of their proxy materials. The production of documents such as an interactive electronic annual report may add $500 - $25,000 to the process cost.
- **Web hosting services.** All public companies will be required to post documents to a “non-tracking, cookie-free” Web site that can handle significant, temporary, high-traffic volume. Depending on the approach taken to fulfill this requirement, Merrill estimates new unique costs of $500 - $17,000 per year for this hosting service.

An alternative cost strategy: the combination proxy/annual report

The use of the combination proxy/annual report has the potential to deliver the greatest cost savings when used in conjunction with any of the Notice and Access model options. In this approach, a company effectively combines all of the required financial disclosure under Rule 14a-3 inside the proxy statement. Combining the required financial information and annual report content into a single book saves money on design, typography, paper, ink, pre-press, actual press time, bindery, labor and postage.

Many Fortune 500 companies have taken this approach and realized tremendous cost savings. Merrill has advocated the use of the combination proxy/annual report for many years and provided clients with modeled cost savings. For many companies, printing and mailing costs can potentially be cut in half.

To receive the maximum cost efficiency in any model, companies should consider preparing a combination proxy/annual report.

Environmental Impact

Electronic delivery can certainly help companies reduce their environmental impact, by lowering print quantities and reducing the consumption of paper, ink, and fossil fuels. For maximum environmental benefit, the Notice Only option is the best choice.

While it is unrealistic to believe that companies will be able to completely eliminate paper versions of their proxy materials, companies can reduce their environmental footprint by purchasing paper and print services from vendors with a demonstrated commitment to environmentally responsible practices.

Buyers can choose from a range of recycled or recovered papers which are produced with varying percentages of recycled fibers and post consumer waste (“PCW”). Other options include groundwood pulp products that are produced with limited or no bleaching agents. Groundwood products use up to 50% less wood per ton to produce than uncoated free sheets, even sheets containing up to 30% PCW. These examples represent a few of the choices that are available. Merrill can help companies evaluate their printing needs to maximize the benefit of these environmentally-friendly options.

IV. Summary

In Spring 2007, Merrill surveyed over 400 companies of all sizes and found that most were overwhelmingly taking a "wait and see" approach to the new proxy delivery options. Many who are obligated to comply in 2008 are just beginning to determine the best path.

Of course, there is always a vanguard of early adopters – companies that wish to appear on the cutting edge, industries where environmental concerns are of particular importance, and compliance officers with a preference for innovative solutions. But most of the companies surveyed appear to be inclined toward a "baby steps" approach. They will:

- *Learn from the experience of others.* Large Accelerated Filers will look to the voluntary companies and learn from those that elect electronic delivery as their default position. Companies mandated to comply in 2009 can look to the experiences of voluntary participants and Large Accelerated Filers. The great fear is the failure to secure a quorum. If that happens with a company of any size, it will lead to heavy adoption of the Full Set Delivery option.
- *Revisit their current proxy posting process.* Public companies surveyed by Merrill universally felt they were prepared for the Web posting requirements of the Notice and Access model. Most indicated they would continue to follow the best practices of their transfer agent or intermediary to handle the Web site posting requirements.
- *Investigate potential cost savings of limited press runs and on-demand printing but without planning any immediate action.*
- *Follow the inertia principle.* Many companies that are not required to comply on January 1, 2008 will continue to do things as they have in the past until it becomes mandatory to do otherwise or the evidence of cost-savings is overwhelming.
- *Meet with internal staff and printing solutions providers, as well as other vendors, to discuss the Notice and Access model and determine the best path for their company.*

Merrill Notice and Access Audit Program

Prudent companies should begin now to explore their stakeholder communication strategies and their proxy process options.

Since the SEC's December 2006 Universal Internet Availability release, Merrill has engaged in an extensive evaluation program to gain full understanding of the Notice and Access model's impact on our customers and partners. For Large Accelerated Filers, "voluntary" compliance will very soon become "required" compliance. Smaller companies will be facing the same issues soon thereafter. Prudent companies should begin now to explore their stakeholder communication strategies and their proxy process options.

Armed with research and best practices, Merrill is ready to help you navigate the choices. Contact your Merrill representative today to schedule your free Notice and Access Audit Program consultation representative.

About Merrill Corporation

Founded in 1968 and headquartered in St. Paul, Minn., Merrill Corporation (www.merrillcorp.com) is a leading provider of outsourcing solutions for complex business communication and information management. Merrill's services include document and data management, litigation support, branded communication programs, fulfillment, imaging and printing. Merrill's target markets include the legal, financial services, insurance and real estate industries. With more than 6,300 people in over 70 domestic and 15 international locations, Merrill empowers the communications of the world's leading companies.

About Transaction and Compliance Services

Through a broad range of tools and services, Merrill Corporation streamlines document composition, filing, printing, distribution and electronic access services to support the transaction and regulatory compliance activities of our clients such as securities offerings, reorganizations, mergers and acquisitions, Securities and Exchange Commission filings and other regulatory filings. Merrill is a registered, third-party service provider that offers public companies expert EDGARization and XBRL filing services. We compose, edit, electronically file, manage and distribute data in printed or electronic format. Merrill DataSite is an online virtual data room (VDR) solution that facilitates online due diligence review and eliminates the need for paper data rooms. DataSite is accessible from any Web browser and offers electronic document integration, robust audits and enhanced reporting, dedicated professional service 24/7/365 and rapid implementation of the data room within 72 hours.

Corporate Headquarters
One Merrill Circle
St. Paul, MN 55108
866.399.3770

www.merrillcorp-financial.com/na21

MERRILL CORPORATION