

- ▶ Three firms describe positive experiences in moving to e-proxies
- ▶ The switch brings big cost savings, few glitches and minor impact on voting
- ▶ Getting proxy finalized under tighter SEC deadlines presents a problem
- ▶ Some companies opt to do a second mailing
- ▶ SEC rules on what goes into the notice considered too restrictive

By Chuck Callan

# Take note, e-proxy is on its way

The SEC adopted e-proxy rule amendments in January 2007 in order to provide corporate issuers with the opportunity to save a potentially significant amount of money on printing and postage costs. As per the SEC's press release, the new model requires a company to post its proxy materials on a website, and send a 'notice of internet availability of proxy materials' to shareholders at least 40 days before the meeting date. The SEC also states: 'A proxy card may not accompany the notice. However, a company may send a paper proxy card accompanied by another copy of the notice 10 days or more after sending the initial the notice.' Within the first six months of the voluntary rules going into effect, less than 10 percent of all issuers whose meetings took place during that period chose to go ahead and adopt the new rules, known as 'notice and access'.

Many companies were initially hesitant, and made the decision to take a 'wait and see' approach in order to thoroughly assess in advance what the impact of the new rules would be on meeting outcomes, costs, preparation time and shareholder relations. But with notice and access to become mandatory over the next two years, these companies will have to become engaged in the process. And now, a year after the companies that chose to embrace notice and access have had a chance to see the results and review their experiences, those wary of the new process can gain insight, and even com-

fort, in examining how other companies fared.

Broadridge Financial Solutions, which facilitates communications between issuers and their beneficial shareholders, recently interviewed executives from three companies who were willing to share their experiences.

The interviewees included: Helen Kaminski, assistant general counsel, and John-Paul Schuirink, director of investor relations, at Sara Lee; Gale Smith, director of corporate development at Pharmos; and Dennie Kimbrough, investor relations, and John Seethoff, deputy general counsel and assistant corporate secretary, at Microsoft.

The following article contains quotes that were excerpted from interviews that were conducted in March by Chuck Callan, senior vice president for regulatory affairs at Broadridge.

## What were the key determining factors in your decision to utilize notice and access for your recent shareholder meeting?

**Schuirink:** The potential cost savings was the key factor. We knew notice and access was coming in July 2007 – three months before our mailing date – so we decided to explore early adoption. We sensed our shareholders would not be averse to notice and access since the company had been encouraging them for some time to use electronic delivery. Also, the sustainability issues, such as reducing paper and saving trees, made it more com-



elling. Lastly, we saw notice and access as a method for faster delivery of proxy materials to our shareholders.

**Smith:** That's easy. Our decision was based 100 percent on the cost savings. Personally, I was also interested in helping the environment, knowing more often than not that annual reports are not widely read by individual shareholders and are tossed into the garbage.

**Seethoff:** We did an initial cost estimate and came up with a range of 15-25 percent cost savings, all in. This is what motivated us to move forward on notice and access. Sustainability was a consideration, which goes hand-in-hand with the cost savings. There were other considerations as well. We had a lot of discussion about the potential impact on voting, not so much from a concern about the outcome of any vote, but just thinking about our shareholder base as we have a very large number of retail voters. We were trying to be thoughtful about this important constituency.

#### **What reservations did you have about using notice and access?**

**Smith:** The biggest issue was whether our corporate legal counsel could get the proxy finalized and filed within the earlier deadline to avoid rush fees at the printer.

**Seethoff:** Timing was certainly a significant factor. We realized that we had to be more deliberate in getting certain things done by a certain date.

**Kaminski:** We looked at our shareholder base prior to implementing notice and access, and although it was heavily weighted toward institutional stockholders, we also have a lot of older retail holders who have been stockholders for a long time. There was a concern on the part of management that these holders may have difficulty with the notice and access model since they may not be as internet savvy as our institutional holders.

As far as any negative factors that impacted our

decision on whether to move ahead with notice and access, our two biggest concerns were having all the materials ready 40 days in advance of the meeting which cut off almost a week in our preparation time, and the potential impact on voting as a result of lower turnout on the retail side. However, since the NYSE did not change the broker non-vote rule, we thought 2007 would be the ideal time to test out notice and access to see what kind of vote response we'd get before the new NYSE rule goes into effect.



**Helen Kaminski:** To be successful, the instructions on the notice have to be really clear

retail stockholder base. We modified our shareholder services procedures a bit by providing training to different groups that might get phone calls from shareholders. We wanted to make sure that we could effectively respond to anyone who called with a complaint, such as not having a computer or not being able to request a paper copy because they had a rotary phone.

So we made sure that our transfer agent, investor relations, communications and legal personnel could answer questions and request mailed copies of materials on the investor's behalf, to facilitate getting paper copies and to make sure their desire to opt out of notice and access would be effective in the future. That was probably the biggest challenge that we had to face.

**Smith:** I don't think there were any significant challenges with notice and access. There were a few little bumps like the notice itself whose font was too small, and it did nothing to promote what notice and access was all about.

**Seethoff:** The piece of paper people get is confusing, especially since most retail holders are unfamiliar with

#### **What challenges were encountered in complying with the requirements of notice and access? How did you address them?**

**Kaminski:** The most significant challenge we knew we had to face was not so much complying with the requirements but dealing with some of our elderly

**'We realized that we had to be more deliberate in getting certain things done by a certain date'**

**John Seethoff, Microsoft**

notice and access. They are expecting hard copies of annual reports and proxies, and all they get is a one-page notice. They may not understand what it is or be confused about the new process even if they do understand what it is. We tried to mitigate this, consistent

## 'We had only two proposals put up for vote: the re-election of directors, which was routine, and an increase in the stock option plan, which was not'

*Gale Smith, Pharmos*

with the requirements of the rules – but there are practical limits to the notice design and the amount of information it can include.

**Kaminski:** To be successful, the instructions on the notice have to be really clear, with bigger print and easy to understand language, so that when shareholders get it, they know what to do with it. We received some complaints and requests from shareholders asking for help, although we received fewer calls than we expected. We expect that this type of issue will taper off next year, because anyone who called or complained this year will automatically receive paper next year and in the future.

### Did you provide any advance communication with shareholders of your intention to use notice and access?

**Kimbrough:** We did post information on notice and access on the investor relations section of our website. We were also able to get the notice augmented to indicate this was a new process this year, and clarify that investors can still get an annual report by mail.

**Schuirink:** We set up a separate notice and access link to the annual meeting webpage on saralee.com with links to our notice and access page on Broadridge's Investor eConnect site. We thought that this would be more helpful since shareholders would intuitively go to saralee.com and we wanted to use saralee.com/annualmeeting on the notice to our shareholders. We think this helped us drive more people to the site.

### To what extent was the nature of the annual meeting agenda a factor in deciding whether to adopt notice and access?

**Seethoff:** Generally our meetings are fairly low key. This year we had two shareholder proposals, which were policy-oriented proposals. We correctly predicted that these would get low, single-digit support. Whether notice and access was going to tip the balance on these proposals was not a concern for us.

**Kaminski:** As far as our meeting, it was not routine since we

had several stockholder proposals on the ballot.

**Smith:** We had only two proposals put up for vote: the re-election of directors, which was routine, and an increase in the stock option plan, which was not. Since the first proposal was routine, we figured we could rely on it to obtain our quorum by virtue of the discretionary broker vote being returned favorably on it.

Although the second proposal was non-routine, we felt confident we would get enough favorable votes in to have it pass, primarily through insider holdings, which is what ultimately did happen. If we had been concerned about obtaining a quorum and/or getting enough votes in on the second proposal, we may have not opted for going with notice and access.



**John Seethoff:** Whether notice and access was going to tip the balance on these proposals was not a concern for us

### What's the make-up of your shareholder base?

**Smith:** Our shareholder base at the time of our last annual meeting comprised approximately 6 percent institutional accounts and the balance, or 94 percent, retail accounts, with 97 percent of shares held in street name for a total of about 13,500 shareholders.

**Kimbrough:** We have approximately 29 percent retail shares, a large officers and directors segment of 13-14 percent of the shares, and the remainder of the shares held by institutional investors.

**Seethoff:** Although championing technology and the anticipated cost savings were important, because of our significant number of retail shareholders our CFO and

general counsel were concerned about participation levels in that group.

**Kaminski:** Sara Lee's shareholder base is heavily weighted toward institutional ownership, but we also have a significant number of retail holders. Our management is sensitive to the fact that some shareholders are more internet savvy than others and wanted to make sure we accommodated all of our shareholder groups.

#### Which notice and access model did you adopt and why?

**Smith:** We did notice only, and the cost savings was the driver. We only did one notice mailing since the voting was trending the right way, and we decided that we did not need a second mailing, which we had been considering.

**Seethoff:** We did an initial notice mailing and then a hybrid mailing of second notices to selected retail shareholders. We decided to send out a second notice because it had the proxy card enclosed. This gave shareholders who might have been confused about the first notice a second chance to cast a paper ballot. The second mailing was sent out 10 days after the original notice. This was a fairly significant additional expense that we may or may not do again next year. But given the concerns about the retail base and potential confusion, we thought that this was a good investment.

**Kimbrough:** We sent the second notice to retail shareholders holding from 250 to 999 shares. We wanted to optimize cost savings and also reach as many shareholders as possible. The cut off was at less than 250 shares because we have a great many shareholders in this category but, collectively, they don't vote a lot of the shares. When you do the hybrid approach, you are giving up a significant part of your savings by taking that second step.

**Seethoff:** But the second mailing didn't really trigger much of an additional uptake on requests for full packages. In all, we had less than 20,000 requests for delivery of full packages.



**John-Paul Schuirink:** In total, implementing notice and access resulted in savings of \$268,000 for Sara Lee this year

**Kaminski:** We did a hybrid mailing based on our breakeven analysis, which found that three of our shareholder segments have unique needs. First, for employee shareholders who routinely use the computer for their jobs, we used an electronic consent model and sent them an email with a link to the documents. For international shareholders we sent a full set of paper documents. For the remaining shareholders, who represent the vast majority of our stockholders, we did a notice-only mailing.

#### What savings were realized on printing and postage costs as a result of using notice and access? What other

#### benefits, if any, did you realize?

**Smith:** As far as printing costs, in 2006 we did not have the proxy ready until the last minute, so there were rush fees on top of the normal printing costs. The total in 2006 was \$108,000 to print the proxy and the 10K wrap. For the 2007 annual meeting, the printing cost was \$25,300. As to the Broadridge part of it – meaning the postage pass-through and additional notice fees – I saved a lot of money on postage, which was partially offset by the additional fees to utilize the new notice and access services. Those fees were not part of the cost last year. My postage and fees for 2007 were \$36,000. In 2006, they were \$86,000. All in all, my combined savings exceeded \$130,000. Even if you remove the rush fees in 2006 from the equation, the savings would still be over \$100,000.

**'We wanted to optimize cost savings and also reach as many shareholders as possible'**

**Dennie Kimbrough, Microsoft**

**Seethoff:** The all-in savings came in between 10-15 percent of what we spent last year. Most of this came from printing cost reductions. If we had sent only one notice, without the second mailing, we might have realized another 10 percent in savings. Most of that savings would have been in postage. This was in line with what we expected. One thing to add is we took a very conservative view of the number of copies we should print in anticipation of an unknown number of requests for hard copies. Next year, we expect to realize more significant cost savings by reducing the number of copies that are printed. Last year we sent

out over 2 million packages, and for this year, the number requested was less than 20,000.

**Schuirink:** The most significant cost savings bucket was in the printing. Compared to last year's run, we saved 50 percent on printing and on paper, and 11 percent on postage and Broadridge costs. Savings on postage and other costs were offset somewhat by the additional notice and access fee. Broadridge forewarned us about these fees.

We ended up printing 70 percent less than we did last year and mailed about 10 percent of what we did last year. We printed 75,000 books this year, compared with 280,000 last year. We mailed out 14,000 packages to our international shareholders and then got requests for roughly 3,000 paper copies, so we actually mailed less than 20,000 altogether. In total, implementing notice and access resulted in savings of \$268,000 for Sara Lee this year.

**Kaminski:** We mailed three pieces: the proxy statement; the financial report; and the glossy summary annual report. We worked closely with our printer, who was able to offer almost a print-on-demand level of service if we needed additional copies of the proxy statement or financial report. Next year, we can scale back even more because in 2007 we planned for a possible 10 percent opt-in rate, or 25,000 requests for hard copy, when the opt-in rate turned out to be no more than 2-3 percent.

#### **Was there a change in shareholder voting in comparison to last year?**

**Kimbrough:** Quorum was off by 2 percent. Last year we had over 88 percent of shares outstanding voting, and this year we were closer to 87 percent. There was not a big difference in institutional voting, but we did see a big difference in the retail vote. Retail was down. Overall, what was interesting was that the percentage of shareholders who voted was the same as last year – 32 percent of total registered shareholders. This included both institutional and retail.

**Kaminski:** Overall, we experienced a small decline in quorum from 86.8 percent to 82 percent. There was also a small decline in institutional votes, but the 4 per-

cent or so overall decline in total shares voted came mostly from the retail base.

**Smith:** In terms of percentage of shareholders voting, the total vote was about the same as in 2006. We don't get a big return generally from shareholder voting without the discretionary broker vote. In 2007, 74 percent of shares were voted and in 2006, 79 percent of the shares were voted.

#### **In what ways, if any, could notice and access be improved?**

**Schuirink:** Provide more information in advance to shareholders and better design the notice. The notice card needs bigger type and it should be explicit that this is not a ballot.

**Smith:** We were interested in sending our annual letter to shareholders, which was part of the 10K wrap, with the notice, but the SEC's rules don't allow you to send anything with the notice, except the proxy materials. We spent a lot of time putting this letter together and there were a lot of important points that we wanted to communicate to our shareholders. We were not sure how likely it would be for shareholders to go to

the web site to read this letter, so we wanted to print the letter and send it with the notice. We could have sent out the letter separately but we would then be paying double the postage. That was a shame.

**Seethoff:** At a concept level, people will continue to see if some of the timelines can be shortened or look for ways to better accommodate the company's needs in putting materials and filings together, and getting them into the process. One idea would be to go from 40 to 35 days. We hope there will be more clarity in terms of a company's ability to more effectively communicate to shareholders what notice and access is and how to make it work better. This is an issue that we have spoken with Broadridge about and should be taken up by the SEC.

► **Chuck Callan is senior vice president, regulatory affairs for Broadridge Financial Solutions.**

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