

## NEW SEC HOUSEHOLDING RULES COULD SAVE ISSUERS THOUSANDS OF DOLLARS

Delivering a single copy of a proxy statement to a single address when two or more shareholders share the same address could save issuers thousands of dollars. The Securities & Exchange Commission has adopted amendments to the proxy rules under the Securities Exchange Act of 1934 regarding the delivery of proxy materials that will permit companies and intermediaries to satisfy the delivery requirements by householding proxy materials. This method of delivery will reduce the amount of duplicate copies that shareholders receive and will lower printing and mailing costs for companies. These amendments also modify the rules for householding annual reports. The SEC also amended Rule 154 under the Securities Act of 1933 to permit householding of proxy statements combined with prospectuses.

### Obtaining Registered Shareholder Consent

Issuers are required to obtain a consent to household from each registered shareholder who will be included in a householded group. The issuer can obtain either an affirmative written consent to household from a shareholder or rely on an implied consent to household obtained in accordance with the new rules adopted by the SEC.

#### Affirmative Written Consent

In order to satisfy the written consent requirement, the shareholder would need to consent specifically to the householding of proxy materials. Also, in order for a written consent to be valid, a shareholder must be informed of the following, before giving written consent:

- The duration of the consent
- The procedures the shareholder must follow to revoke consent
- The issuer's obligation to begin sending individual copies to a shareholder within 30 days after the shareholder revokes consent

#### Implied Consent

An issuer is permitted to deliver a single set of proxy materials to multiple shareholders who share an address by relying on implied consent to householding if all of the following conditions are met:

- Each shareholder at the shared address has the same last name as the other shareholders (or the company reasonably believes that they all are members of the same family)
- At least 60 days before beginning delivery by householding, the company sends each registered shareholder at the shared address a separate written notice in plain English of its intention to household proxy materials

- The notice or envelope in which the notice is mailed includes the following prominent statement, or similar clear and understandable statement, in boldfaced type: “**Important Notice Regarding Delivery of Security Holder Documents**”. If the notice is mailed with other shareholder communications, both the notice and the envelope containing the notice must include this prominent statement. The notice provides shareholders who object to householding with a reply form or a toll-free telephone number to object to householding
- The notice states the duration of the consent and explains how a shareholder can revoke consent to householding
- The company does not receive notice that the shareholders object to householding within the 60-day waiting period
- The company delivers householded proxy materials only to a post office box or residential address

### **Obtaining Beneficial Shareholder Consent**

An intermediary (brokerage firm and bank) is permitted, but not required to household proxy materials at the request of an issuer. They are also allowed to household by their own initiative, but only if the issuer does not object.

An intermediary does not need to obtain an affirmative consent to household from an issuer before beginning householding. The SEC believes it is sufficient if the intermediary provides advance notice to the issuer that it intends to begin householding, and provides precise instructions as to how the issuer may object to householding. The notice should be sent by the intermediary to the issuer’s senior officer in charge of shareholder communications or other person the issuer appoints. If an issuer objects, the intermediary may not household that issuer’s documents. An intermediary must stop householding an issuer’s documents if the issuer objects at any time. Intermediaries must follow the same procedures as issuers when obtaining consents to household from beneficial shareholders.

*Under the new amendments to the proxy rules, intermediaries or their agents may offer shareholders the option of consenting to householding of proxy materials relating only to a specific company or to householding of all proxy materials the intermediary is required to forward to the shareholders.*

Because intermediaries will be permitted to household unless the issuer objects, the SEC believes it is appropriate that the intermediary bear the burden of the consent solicitation expense, mainly because intermediaries may receive consents from shareholders to household materials from numerous companies in which they hold shares. It would not be clear how intermediaries would split the cost of the consent solicitation between the different issuers. Also, since intermediaries can include the implied consent notice with other shareholder communication mailings, they are able to conduct the solicitation of householding consents at a much lower cost.

### **Estimated Cost of Obtaining Implied Household Consents**

The SEC estimates that the cost of obtaining a shareholder's consent to householding, using the implied consent procedure allowed by the amendments, would be less than \$.80 per implied consent notice. The actual cost may be less, as the above estimate assumes the notice will be mailed separately from other shareholder communications. Companies and intermediaries may mail the notice with other communications as long as the prominent legend "Important Notice Regarding Delivery of Security Holder Documents" is included on both the notice and the envelope containing the notice.

### **Inclusion of Multiple Proxy Card With Single Proxy Statement**

Proxy cards are addressed based on the shareholder name and account number as it appears on the registered shareholder list or on the beneficial shareholder records at brokerage firms and banks. Issuers must continue to send separate proxy cards designating the account information for each separate shareholder account with the householded proxy statement and annual report. This applies to both registered and beneficial shareholders.

### **State Law Requirements Concerning Notice of Meeting**

Most states have rules requiring companies to provide shareholders with written notices of meetings. The provisions generally state that written notice of a meeting at which shareholders are required or permitted to take action must be sent to each shareholder of record a specified number of days before the meeting date. For example, an issuer incorporated in Delaware must give written notice of any meeting to *each* shareholder not less than 10 and not more than 60 days before the meeting date.

Shareholder meeting requirements are governed by state law, not by the SEC proxy rules. Companies choosing to household proxy statements will have to consider the possible need to deliver under separate cover the notice of meeting to each shareholder in the household to satisfy state law requirements.

### **Cost Saving Benefits for Issuers**

The SEC estimates that a company could save approximately \$6 for each eliminated mailing. This is based on the assumption of saving \$5 from printing costs, \$1.30 from mailing a proxy package and \$.32 for mailing the proxy card separately. These savings could be higher or lower, based on the actual printing and mailings costs of an issuer's proxy materials.

### **How We Can Help**

To discuss the new SEC rules regarding householding of proxy materials and the most cost-effective way to solicit consents to householding, please contact Karen Smith at Allen Nelson & Co. We look forward to being of assistance.

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