

1999 DRAFTING REQUEST**Bill**Received: **10/15/98**Received By: **champra**Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 266-3387**By/Representing: **Brian Pleva**This file may be shown to any legislator: **NO**Drafter: **champra**

May Contact:

Alt. Drafters:

Subject: **Bus. Assn. - corporations**Extra Copies: **KSH****Topic:**

Electronic Proxy Shareholder Voting

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Memo

To: Mr. Scott Hubli
From: Brian Pleva
Date: October 13, 1998
Re: Electronic Proxy Voting Proposal

Attached is information supporting an initiative to grant shareholders the options of voting their proxies via the Internet or over the phone. Please begin drafting this legislation. If you have any questions, please do not hesitate to contact me.



September 4, 1998

To: Ted Jankowski
John Wilson

From: Bruce C. Davidson
Anthony H. Driessen
Catherine S. Powell

cc: Tom Fonfara

Re: Proposed Amendments to Wisconsin Business Corporation Law to Allow Electronic Appointment of Proxies

We are proposing amendments to Wis. Stat. §§ 180.0722 and 180.0724 to allow the use of the telephone and the Internet for the appointment of proxies. The current language of Wis. Stat. §180.0722(2) is as follows:

A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney-in-fact. An appointment of a proxy may be in durable form as provided in s. 243.07¹.

Wis. Stat. § 180.0724 refers to the proxy appointment being “signed” with regard to authentication of the proxy. In Chapter 180, except as otherwise provided, the term “signed” is defined to include “any symbol executed or adopted by a party with present intention to authenticate a writing.” Wis. Stat. § 180.0103(16). No Wisconsin case addresses use of the telephone or the Internet for the appointment of a proxy.

¹Wis. Stat. § 180.0722 is substantially the same as Section 7.22 of the Revised Model Business Corporation Act (the “RMBCA”). As explained in Official Comment 1 to Section 7.22 of the RMBCA, the word “proxy” is often used ambiguously, sometimes referring to the grant of authority to vote, sometimes to the document granting the authority, and sometimes to the person to whom the authority is granted. In the RMBCA the word “proxy” is used only in the last sense; the term “appointment form” is used to describe the document appointing the proxy; and the word “appointment” is used to describe the grant of authority to vote.

We are proposing amendments to Wis. Stat. § 180.0722(2) to make Wisconsin's statute substantially identical to Delaware and New York law and a conforming change to a related provision, Wis. Stat. § 180.0724. Delaware and New York amended their corresponding statutory provisions in 1990 and 1997, respectively. Del. Code Ann. tit. 8, § 212 and N.Y. Bus. Corp. Law § 609.

Wis. Stat. § 180.0722(2) would be amended as follows:

Wis. Stat. § 180.0722(2).

Replace "A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney-in-fact." **with** "(a) Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for the shareholder by appointing such person or persons to act for the shareholder as proxy."

Add paragraphs (b) and (c) to Wis. Stat. § 180.0722(2).

(b) Without limiting the manner in which a shareholder may appoint a proxy pursuant to subsection (a) of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

1. A shareholder may execute a writing appointing a proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee, agent or attorney-in-fact signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

2. A shareholder may appoint a proxy by transmitting or authorizing an electronic transmission including, but not limited to, Internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram to the person who will be appointed as proxy or to a proxy solicitation firm, proxy support service organization or like agent duly appointed as proxy to receive such transmission, provided that any such transmission must either set forth, or be submitted with, information from which it can be reasonably determined that the transmission was authorized by the shareholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this section may be substituted or

used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Wis. Stat. § 180.0722(7).

Replace “on the face of the appointment form” with “in or on the form of appointment”

Wis. Stat. § 180.0722(8)(a)

Replace “in writing” with “in accordance with subd. (2)(b)”.

Wis. Stat. § 180.0724 would be amended as follows:

Add subd. (6) to Wis. Stat. § 180.0724.

(6) “Signed” and “signature” for purposes of this section means the placing of the shareholder’s name or other authorization in or on the proxy appointment (whether by manual signature, electronic transmission, Internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram) by the shareholder or the shareholder’s authorized officer, director, employee or agent.

Please note that the language in our proposal does not track Delaware and New York law word for word. In each of those states, the proxy appointment statute refers to “transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission” and thereafter refers to “such telegram, cablegram or other means of electronic transmission.” We have expressly referred to the Internet and touch-tone telephonic transmission and have rearranged the listing of possible means of conveying the proxy to avoid a reading that a writing must result because telegram and cablegram start the list. We have also simply referred to “such transmission” in the remainder of proposed Wis. Stat. § 180.0722(2)(b)2. In addition, we have used the definition of “signed” that is contained in the California Corp. Code to ensure that Wis. Stat. § 180.0724 complements Wis. Stat. § 180.0722, as amended, and modifies the definition of “signed” in Wis. Stat. § 180.0103(16) for purposes of the proxy provisions.

Electronic Proxy Voting in Wisconsin

The Proposal: Amend Wisconsin's corporation statutes (Chapter 180) to expressly allow shareholders the option of using the telephone and the Internet to vote on matters affecting the corporation. (Shareholders would continue to have the choice of voting by mail.)

Rationale:

- 21 states (see listing attached) already authorize corporations to use electronic means to have shareholders vote their proxies. Their experience has been uniformly positive.
- Many Wisconsin residents already use the phone or Internet to vote their shares in corporations or mutual funds based in other states (Delaware, New York and California, for example).
- For an increasing portion of the population, use of the phone or Internet is preferable to use of the mail.
- Shareholders of Wisconsin corporations should have the option to exercise their voting power through as many means as possible.
- Use of the phone or Internet to vote shares can cut the tabulation costs of a transfer agent by 90% (from approximately 33¢ for processing a mail ballot to 3¢ for an electronic response). Those annual cost-savings can be invested in assets that improve the productivity of workers and make the corporation more competitive.
- If this modest and reasonable change in Wisconsin law is not made, corporations organized under Wisconsin law incur higher administrative costs than their competitors located in other states.

Fiscal Effect: The change to Wisconsin's business corporation law would have no fiscal effect on state or local units of government. With regard to the private sector, the legislation has the potential to yield important savings annually as shareholders choose to vote electronically on corporate matters.

Request for Support

Your support for this legislation to be introduced in Wisconsin is solicited. Please contact me regarding your views and feedback.

Tony Driessen, Quarles & Brady
411 E. Wisconsin Ave.
Milwaukee, WI 53202-4497
ph: 414/277-5759; fax: 414/271-3552
e-mail: ahd@quarles.com

Enclosure: State listing



September 4, 1998

To: Bruce C. Davidson
CC: Anthony H. Driessen
From: Catherine Stevens Powell
Re: Appointment of Proxy by Electronic Transmission

States Allowing Appointment of Proxy by Electronic Transmission:

California § 178	Nevada § 78.355
Colorado § 7-107-203	New Jersey § 14A:5-19#
Connecticut § 33-706	New York § 609
Delaware § 212	North Carolina § 55-7-22
Indiana § 23-1-30-3	North Dakota § 10-19.1-76.2
Louisiana § 75	Rhode Island § 7-1.1-31
Maryland § 2-507	Tennessee § 48-17-203
Michigan § 450.1421	Utah § 16-10a-722#
Minnesota § 302A.449	Virginia § 13.1-663
Mississippi § 79-4-7.22	Wyoming § 17-16-722
Missouri § 351.245	

New Jersey's proxy appointment law allows appointment of a proxy by electronic transmission but it must "result" in a writing. Utah allows appointment of a proxy by "electronic transmission providing a written statement of the appointment to the proxy."

Kentucky Revised Statutes § 271B.7-220 provides that "a telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy shall be deemed to be a sufficient, signed appointment form." The commentary states that this language was added to make clear that proxies may be transmitted electronically and used Ohio General Corporation Law § 1701.48(B) as its basis. Kentucky and Ohio use the same language for proxy appointment. Texas uses similar language as well. It appears that the focus of these statutes is on facsimile transmissions rather than use of the Internet.

Pennsylvania uses the language "[a] telegram, telex, cablegram, datagram or similar transmission . . . or a photographic, facsimile or similar reproduction of a writing" may be used to appoint a proxy so long as there is some unique method to identify the shareholder making the proxy appointment. Penn. Stat. § 1759. The language in this section regarding identification of the person transmitting

the appointment was added to satisfy concerns raised in Parshalle v. Roy, 567 A.2d 19 (Del. 1989) that a datagram without some uniquely identifying mark was not a valid means of appointing a proxy. Pennsylvania does not use the word "electronic" to describe the transmission as does Delaware and I am not certain that the statute would allow use of the Internet to transmit authority to appoint a proxy.

Two New Low-Cost Ways To Vote Your *proxy*

Save  **!**

It's Fast And Convenient.

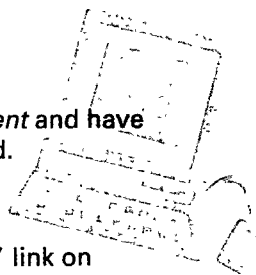
The accompanying *Proxy Statement* outlines important issues affecting your Vanguard fund. Help us save time and postage costs—savings we pass along to you—by voting through the Internet or by telephone. Each method is generally available 24 hours a day and will ensure that your vote is confirmed and posted immediately.

Do not mail the Proxy Card if you are voting by Internet or telephone.

Save  **!**

To Vote By Internet:

1. Read the *Proxy Statement* and have your *Proxy Card* at hand.
2. Go to website **www.proxyvote.com** or to the "Proxy Voting" link on **www.vanguard.com**.
3. Enter the 12-digit **Control Number** found on your *Proxy Card*.
4. Follow the simple instructions.



To Vote By Telephone:

1. Read the *Proxy Statement* and have your *Proxy Card* at hand.
2. Call toll-free **1-800-690-6903**.
3. Enter the 12-digit **Control Number** found on your *Proxy Card*.
4. Follow the simple recorded instructions.

**Your proxy vote
is important!**

I PROXR 0198-2 5MA

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Background

FOR
THE CORPORATE EXECUTIVE

CEOs, CFOs, DIRECTORS, EXECUTIVE OFFICERS AND THEIR ADVISERS

PUBLISHER/EDITOR: JESSE M. BRILL

P.O. Box 3895, San Francisco, CA 94119

THE NEWSLETTER FOR OFFICERS AND DIRECTORS OF PUBLIC COMPANIES

Vol. XII, No. 2

March-April 1998

Internet Voting and Distribution of Proxy Materials And More

A Word From The Publisher

We lead off this issue with the latest practices for Internet voting and distribution of proxy materials. We expect that electronic proxy dissemination, while still in its infancy, will soon become the norm.

We also cover what the SEC's new Rule 701 proposals say (and don't say) about registering deferred compensation plans. And, we provide a few timely accounting alerts.

We also offer a compromise solution to the SEC's S-8 proposal for reporting grants to consultants and advisors. And, we focus on the Reg T problem for cashless exercises of options not covered by a Form S-8.

We report on two major Section 16(b) settlements, which often go unreported and unnoticed, one involving the use of company stock to pay the claim.

We close this issue with news of Hilton's new company-wide food donation program, an example of how, with a little bit of effort, we each can make a difference.

We have also enclosed an early-bird registration form for this year's NASPP Annual Conference, which should be of interest to many of our readers.

—J.M.B.

INTERNET PROXY PRACTICES

With annual meeting season upon us, we wanted to share with our readers the advancements taking place this year in the use of the Internet for proxy (and annual report) distribution and voting. Much has happened since our last report. (See our May-June 1997 issue at pg 6.)

Based on the experiences of the companies that have tried it, using the Internet can be a big money-saver as well as an effective investor relations technique. While it appears that more companies will utilize the Internet in 1998, the total number remains small. However, the interest in cyberspace distribution and voting is increasing substantially; we would expect to see many companies using the new techniques by next year (or even later this year for fiscal year companies).

ADP's Program for Street Name Holders

Because approximately 75% of shareholders today hold their securities in street name, with the formal power to vote resting in the hands of the nominees that serve as the record owners,

CEO's Trading in Company Stock Costs Him \$4.25 Million

We have just learned of a short-swing profit case settled last summer for \$4,250,000, a sum which should serve to remind insiders that trading in company stock can be very costly.

For details on this one, please turn to page 6, within.



2

2 the major benefits of utilizing the Internet will come from procedures dealing with street name accounts. [Street name shares these days are actually held of record by depositories for brokers, etc., such as the Depository Trust Company. The depository typically executes and delivers to each company an omnibus proxy that passes voting power through to the brokers.] The street name holders (brokers and banks) can (even without the company's involvement) solicit the beneficial owners for consent to receive the materials electronically, and then notify the owners when the materials are available on the company's web site. Beneficial owners can then electronically transmit their voting instructions to the broker/record owner. (Even those beneficial owners who have not consented to Internet delivery of proxy materials, and therefore received hard copy, can transmit voting instructions to the broker electronically.)

ADP Investor Communication Services, the mailing and processing agent for an estimated 80% of street name holders, has established a system that allows the underlying beneficial holders to send voting instructions to ADP via the Internet. In 1997, ADP's electronic system accounted for 55.6% of the shares voted through ADP, but these were mostly institutional shareholders.

For the 1998 annual meeting season, ADP is expanding its system to provide for electronic voting by *all* shareholders whose shares are held in street name. The proxy instruction forms prepared and used by ADP will provide investors the option to vote (*i.e.*, to send voting instructions to ADP) via the Internet or by paper or toll-free telephone; ADP, in turn, forwards the instructions to its clients, the nominee brokers, to formally vote the shares. Beneficial owners selecting Internet voting are instructed to go to a special ADP web site (www.proxyvote.com). There, they enter a 12-digit control number (which appears on the proxy card) identifying the individual and the company. They then see on screen an electronic version of the proxy card and transmit their vote to ADP. (Electronic transmission is not available for proxy contests.)

✓ Cost Savings. ADP charges three cents for each Internet vote and 18 cents for each telephone vote, versus 36 cents for business reply postage.

Consent For Electronic Delivery of Future Shareholder Communications

For 1998, ADP generally will be mailing hard-copy proxy materials to the beneficial owners. But, those that vote electronically this year will, after voting, be taken to another screen which allows them to consent to receive future shareholder communications via the Internet (from the company's—not ADP's—web site), instead of by paper. They will be asked for an e-mail address and a personal identification number (PIN), which ADP suggests be the last four digits of the person's Social Security number.

The consent (which continues indefinitely unless revoked) is structured so that the beneficial owner will receive (from ADP) e-mail notices about future proxy materials and any other communications for all of the person's street name holdings at that brokerage firm, not just the company whose shares were just voted. (This means that one cannot opt to receive reports from only some of those companies.)

As presently allowed by the NYSE, ADP is charging 50¢ per e-mail notice, compared to the average cost of \$5 for a company to print and mail hard-copy proxy materials to beneficial owners.

ADP will also do a mailing that encourages a company's street name holders to consent to receiving proxy materials directly from the company via the Internet (see our Intel discussion below), if the company funds this advance solicitation. To consent, holders visit www.investordelivery.com and enter information about their individual brokerage account number along with a PIN number. ADP then e-mails to consenting holders the company's web site address from which the proxy materials, etc. can be accessed.

Some companies are also using special inserts in their paper proxy mailing to highlight the availability of Internet and telephone voting, and of (future) electronic proxy material distribution. [Keep in mind that Internet (or telephone) voting doesn't require the shareholder's prior consent, as opposed to the consent required for electronic receipt of proxy materials.]

Early Results

Based on results from the few companies that have already had annual meetings under ADP's new system, including Lucent Technologies and Oracle, about 2% of the street name shareholders are using Internet voting and 6–7% are using telephone touch tone voting. At ADP's own annual meeting in November 1997, about 2% of its non-institutional beneficial shareholders opted to vote on the Internet, and half of those further consented to go with e-mail notification and Internet distribution of future shareholder materials.

As of mid-March, ADP still plans to roll out its program for street name holders at all public companies served by its nominee clients. This is an ambitious move we hope does not overwhelm its web site. ADP predicts a small reception this year. Nevertheless, ADP's Internet-related activities, its widespread involvement with distributing proxy materials and voting, the ease and fun of interactive voting and clicking through the proxy and annual report on the Internet, the significant cost and resources (trees) savings and advantages to issuers, and the explosive growth of the Internet should soon move most of the proxy process online.

[ADP has also begun marketing its Internet voting and distribution services to companies for use with their *registered* shareholders, a service that will compete with transfer agents.]

Companies' Practices (With Their Registered Shareholders) This Proxy Season

In our May–June 1997 issue (at pgs 5–7) we wrote about the Internet practices last year of some cutting edge companies. This year is bringing some new developments.

Hewlett-Packard

As our readers may recall, last year HP distributed its annual report over the Internet (on its web site) to its employee-shareholders. For 1998, HP is distributing electronically its entire proxy package (*i.e.*, the proxy statement and annual report) to *all* its consenting shareholders of record. (HP has also added telephone voting.)

The process for sending the proxy materials to HP's employee-shareholders is the same as last year. HP sent them an e-mail in October 1997 about its plans for the upcoming proxy season and made e-delivery the *default* (*i.e.*, if we don't hear from you, then you get the materials via the Internet). Last year, only 5,000 of 60,000 HP employees opted out of electronic delivery of the annual report (a savings of about \$300,000). This year, it looks like 60,000 out of 63,000 employees will receive both the proxy statement and the annual report on HP's web site, but they will still get a paper proxy card with a PIN. They can then vote by phone using the PIN, if they want, or they can mail back the proxy card.

[Chevron used a similar proxy and annual report distribution and voting process this year for its 35,000 employees who have company stock in their 401(k) plan accounts. The main difference from HP is that, instead of inferring consent by all employees who didn't opt out (see our May–June 1997 issue at pg 7), Chevron first asked its employees (many of whom do not have handy e-mail access) to consent to Internet distribution of the proxy materials. A short time frame for implementing the consent solicitation and technical problems led only about 3.5% of the employees to consent to Internet distribution. Next year, Chevron plans to start the solicitation process earlier and hopes that, by putting its proxy statement and annual report up this year on its web site, employees will see the advantages of electronic distribution.]

In November 1997, Harris Bank, HP's transfer agent, mailed the necessary consent solicitation to all of HP's public shareholders of record. HP chose to make the consent last only one year, apparently because California law requires that proxies that extend beyond eleven months state a specific period. Since this procedure is new this year, HP also wanted to make sure that people are comfortable with their choice. (Presumably, as the practice becomes more common, consents will extend out for several years, or until revoked.) HP has opted against Internet voting this year, in order to avoid hitting shareholders with too many changes at once.

- 4 Almost 10% of HP's non-employee record shareholders responded to the consent solicitation, opting for electronic delivery. HP mailed the consenting shareholders a letter in January confirming that its 1997 annual report and 1998 proxy statement are posted on its web site, and enclosed a proxy card and instructions for telephone voting (about one-third of these shareholders, in fact, voted by phone). The cost of this mailing was about 50 cents per holder, compared to \$5 for printing, postage and handling the proxy statement and annual report. HP estimates it needed to receive consents from about 10% of its record shareholders to break even.

Intel

In 1997, Intel became one of the first public companies to distribute both its proxy statement and annual report to its consenting record holders electronically; 10% of Intel's 100,000 record holders participated. This year, Intel is again using a paper-based procedure for soliciting consents from its registered holders. (See our May-June 1997 issue at pg 6.) It also plans still to solicit consents yearly, but is considering multi-year consents for the future.

This year, Intel's record holders can vote electronically through a web site run by Harris Trust, Intel's transfer agent. Intel is considering putting an icon on the Internet version of its proxy statement that will allow its registered holders to click on the icon and vote.

As discussed above, Intel has also retained ADP to solicit Intel's *street-name* holders for their consent to receiving Internet distribution of its 1998 proxy materials. (As of mid-March, only Intel and Gateway had decided to pay ADP to make this additional solicitation.) It looks like 5%-8% of Intel's beneficial owners opted to receive the 1998 proxy materials via the Internet.

First Union

First Union was the first company to solicit consents from its registered holders for Internet distribution of its annual report. The company puts two versions of its annual report on its web site. One is in a "web-friendly" version, while

the other is the full annual report with complete financials which shareholders can download as a PDF file (portable document format that retains the pagination and appearance of the printed document). North Carolina, the company's state of incorporation, apparently does not yet accommodate electronic voting, so that option is not available to First Union's registered shareholders.

First Union approaches soliciting consents (to electronic delivery of the annual report) a little differently from Intel or HP. Believing its shareholders would wonder about the costs of a standalone mailing dedicated to soliciting their consent to electronic delivery, the company has its registered holders opt for Internet distribution of its annual report by completing a card that appears in the annual report. Thus, First Union's record shareholders will receive the upcoming annual report via the Internet only if they had completed the card in the back of last year's report, which is almost a lifetime ago in terms of the Internet's expansion. [First Union plans to discontinue the choice it had given shareholders to receive the annual report on a CD-ROM. Although that delivery medium currently offers more multimedia presentation capabilities, the company has decided that the development and distribution costs are not the best use of corporate resources. It thinks that eventually everything will be Internet-based, and it wants to focus instead on the prevailing technology.]

First Union does not make available electronic delivery of its proxy statement for its record holders, essentially because the company has little desire to post its proxy statement on its web site. It does not want non-shareholders who are just surfing the Web (customers, vendors, community activists, etc.) to wander into, e.g., personal information about directors and officers that is found in a proxy statement.

Ameritech—Taking The Lead

Last year, Ameritech offered Internet voting. This year, Ameritech is adding a paperless (and evergreen) consent, and electronic proxy

statement and annual report distribution. Ameritech included with its third quarter dividend check an announcement informing shareholders how to go online (on the web site of its transfer agent, First Chicago) to consent to participate in the program. The consent is for an unlimited duration but can be revoked at any time.

Consenting shareholders received an e-mail in early March (approximately six weeks prior to the 1998 annual meeting), providing links to the proxy statement and annual report and an electronic proxy identification number. The shareholder can then go to First Chicago's Vote-By-Net site (www.vote-by-net.com) to vote. This site can also be used for voting by shareholders who received paper copies of Ameritech's proxy materials.

It seems to us that what Ameritech is doing with its registered shareholders is where the proxy solicitation process is (or should be) headed. Together with an ADP-type process for street name holders, the savings for each company could be dramatic.

State Corporation Law Limitations

State law concern with electronic proxy cards and voting is limited to shareholders of record, and thus would not affect ADP's street name program. California authorized electronic proxies way back in 1991 (see Section 178 of California's General Corporation Law). Delaware's Section 212(c)(2) has been interpreted to accommodate electronic proxies. Utah has adopted a Digital Signatures Act. New York has just amended its corporation law to permit electronic proxy voting. Other states' pre-electronic age proxy voting provisions may inadvertently contain problematic language, e.g., the proxy must be "signed." Many states fall somewhere in between: no express authorization and no problematic language in their proxy provision.

Some state legislatures may end up having concerns over authenticating electronic signatures (the same could be said for hard copy), while others may want to require PINs or even encryption. [We doubt this would be a matter which the SEC could pre-empt under NSMIA,

for "covered" securities, as this seems to be a matter of corporate rather than securities law. Keep in mind that it is only the law of the state of incorporation that a company needs be concerned about, not the residence of each of its shareholders. Thus, as a practical matter, once any questions are resolved in the five or so states where most corporations are domiciled, most of the concerns here will be gone.]

For more on state corporation law considerations, including electronic delivery of the notice of meeting and proxy materials, see Chapter 11 of *Securities Regulation In Cyberspace* by Professor Howard Friedman. [Keep in mind that ADP's program for street name holders would not run afoul of state law because it does not involve electronic "voting," but rather (electronic) instructions to the record holder.]

Attending a Shareholder Meeting (and Voting) via the Internet—Bell & Howell

For the last two years, Bell & Howell's shareholder meetings were broadcast live on the Internet. RealAudio software allows real-time transmission of the meetings on the company's web site. (In its proxy mailings, the company includes instructions on how to download the software for free.) In 1997, approximately 1,650 people attended (live) over the Internet, up from 230 the first year. The technology also permits shareholder participation through e-mail questions to management. For the last two meetings, the company has received from 10 to 15 online questions. An audio tape of the meeting and accompanying slide show remained online on the company's web site for at least a month following the meeting.

Last year, the company allowed its registered shareholders to vote at its web site until the start of the meeting. About 25% of the company's 18.2 million outstanding shares were voted by proxy over the Internet. Bell & Howell still is sending paper versions of its proxy and annual report to its registered holders, but in 1998 is including information about consenting to Internet distribution for next year.

180.0721**Note 5**

shares, their purported amendment to bylaws, authorizing corporate president to file bankruptcy petition, was without effect. Matter of Heidel House Enterprises, Inc. (Bkrtcy.1984) 40 B.R. 932.

Although statute appeared to prevent pledgees from voting pledged stock until such stock was transferred to them, such provision could be modified by agreement, in view of strong public policy in favor of enforcing settlement to the litigation among informed parties, and in view of fact that all parties were disputing rights in close corporation of which they comprised virtually all the major participants. Matter of Heidel House Enterprises, Inc. (Bkrtcy.1984) 40 B.R. 932.

Assuming that the right to vote stock passed to the pledgee as the legal holder, his vote to terminate a contract for performance of which by pledgor the stock was transferred as collateral security was not valid, being in direct violation of the intent of parties and the purpose of the pledge. *Burke v. Universal Granite Quarries Co.* (1923) 193 N.W. 517, 180 Wis. 520.

6. Abuse of majority power

Majority stockholders, even with respect to operations within corporation's powers, could not fraudulently conspire to turn over to themselves corporate advantages to detriment of corporation or minority. *Martin Orchard Co. v. Fruit Growers' Canning Co.* (1930) 233 N.W. 603, 203 Wis. 97.

180.0722. Proxies

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney-in-fact. An appointment of a proxy may be in durable form as provided in s. 243.07.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months from the date of its signing unless a different period is expressly provided in the appointment form.

(4)(a) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

1. A pledgee.
2. A person who purchased or agreed to purchase the shares.
3. A creditor of the corporation who extended it credit under terms requiring the appointment.
4. An employe or officer of the corporation whose employment contract requires the appointment.

5. A party to a voting agreement created under s. 180.0731.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent of the corporation authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

BUSINESS CORPORATIONS

180.0722

Note 2

(6) Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) Subject to s. 180.0724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

(8) A proxy appointed in connection with a shareholder vote under s. 180.1150(5):

(a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in writing.

(b) Shall be solicited and appointed apart from the sale of or offer to purchase shares of the issuing public corporation, as defined in s. 180.1150(1)(a).

(c) May not be solicited sooner than 30 days before the meeting called under s. 180.1150(5), unless otherwise agreed in writing by the person acting under s. 180.1150 and the directors of the issuing public corporation, as defined in s. 180.1150(1)(a).

Historical and Statutory Notes

Source:

1989 Act 303, § 13, eff. Jan. 1, 1991.

Prior Laws:

L.1951, c. 731, § 7.

St.1951, § 180.25.

L.1953, c. 399, §§ 13, 14.

L.1959, c. 319, § 1.

L.1965, c. 53, § 15.

L.1971, c. 285, § 14, eff. April 30, 1972.

L.1981, c. 390, § 158, eff. June 17, 1982.

1983 Act 200, §§ 3, 4, eff. April 24, 1984.

1985 Act 195, §§ 4 to 6, eff. April 22, 1986.

St.1987, § 180.25.

Law Review Commentaries

Statutory close corporation status. Robert E. Holtz, 63 Wis.Law. 19 (March 1990).

Library References

Corporations ¶198(2).

WESTLAW Topic No. 101.

C.J.S. Corporations § 386.

Notes of Decisions

In general 1

Consideration for proxy 3

Revocation of proxy 2

1. In general

Proposed certificate of stock which took away from owner power to select a proxy of his own choice was in violation of statute. 8 Op.Atty.Gen. 47 (1919).

2. Revocation of proxy

Proxies given to optionees in order that stockholders' meeting held without notice to shareholders granting option might be validated were not coupled with an interest and were revocable according to notice duly given. *Stoelting Bros. v. Stoelting* (1944) 16 N.W.2d 367, 246 Wis. 109.

An irrevocable proxy was not against public policy. 1 Op.Atty.Gen. 122 (1912).

CHAPTER II

CORPORATE GOVERNANCE IN CYBERSPACE: PROXY STATEMENTS, ANNUAL REPORTS, AND THE VIRTUAL SHAREHOLDERS' MEETING

11.01 Electronic Distribution Of Proxy Statements

Every publicly held company registered under Exchange Act Section 12 is subject to the SEC's proxy rules. Rule 14a-3 prohibits the company's management or any dissident from soliciting authority to vote on behalf of a shareholder at a scheduled shareholders' meeting without first giving each shareholder a written proxy statement. The statement must contain the information specified in Schedule 14A, describing the agenda items that the shareholders' meeting will consider.¹ Even if a company can obtain a quorum at its shareholders' meeting without soliciting proxies, Rule 14c-2 requires it to send a similar written statement to all the shareholders entitled to vote.²

Companies have traditionally solicited proxies by mailing (or providing to the banks and brokers holding shares on behalf of beneficial owners, which then mail them) paper proxy statements, proxy cards, and annual reports to shareholders. Developments in electronic communications now provide an alternative means of delivery. Changes made to the New York Stock Exchange's rules in late 1996 permit shares to be issued in electronically registered form, rather than requiring a stock certificate on paper. This change should facilitate electronic communication between issuers and the record and beneficial owners of their shares.³

11.01 [a] Preliminary proxy statements

The issuer must file preliminary-form proxy statements for nonroutine matters with the SEC at least 10 days before distributing definitive

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1. When the vote will involve a merger or similar transaction, the required information is set out in Form S-4 (for foreign mergers and similar transactions, Form F-4).
 2. For a discussion of special rules governing proxy fights and the use of Internet technology in connection with election contests, see *infra* Sections 12.01 and 12.02.
 3. See John C. Wilcox, *Shareholder Communications*, INSIGHTS: CORPORATE & SECURITIES LAW ADVISOR, Vol. 11, Pgs. 8, 9 (March 1997).

copies to shareholders.⁴ It may not furnish them with a proxy card until after delivering the definitive proxy statement.⁵ The SEC amended the proxy rules in 1992, allowing issuers and shareholders to discuss proposals as soon as the shareholder receives the preliminary proxy statement.⁶ This change lets management seek shareholder reaction to its plans before distributing the definitive proxy statement and to modify its proposal in the definitive proxy statement if shareholders' initial comments seem unfavorable.⁷

Time constraints generally make it difficult for issuers to obtain investor input on proposals disseminated in preliminary proxy statements. Management normally expects to send shareholders the definitive proxy statement shortly after the 10-day on-file period expires. Internet technology, however, now offers the possibility of obtaining preliminary investor reaction to a proposal without sacrificing the traditional time frames. An issuer can post its preliminary proxy statement on its Website, together with a hypertext link that allows investors to e-mail their comments on the proposal back to the issuer. With aid from the Web, responses may come in rapidly enough for management to consider them when formulating the final version of the issuer's proxy materials.

11.01 [b] Definitive proxy statements

For routine annual meetings, the issuer must file only the definitive proxy statement with the SEC (and then deliver it to shareholders).⁸ Even for nonroutine annual meetings, typically only the definitive proxy statement goes to most shareholders. The SEC releases on using electronic media for delivery purposes apply the same standards to electronic delivery of proxy statements as they do to the electronic delivery of Securities Act prospectuses. Thus proxy statements may be delivered electronically, so long as the standards regarding timely and adequate notice, effective access, and evidence of delivery are met.⁹

Merely placing the proxy statement on company's Website and sending notice to all shareholders that the proxy statement is available online is not sufficient to meet the delivery requirements of the proxy

4. Exchange Act Rule 14a-6(a).

5. Exchange Act Rule 14a-4(f).

6. Exchange Act Rule 14a-3(a). See *Regulation Of Communications Among Shareholders*, SEC Release No. 34-31326 (Oct. 16, 1992), [1992 Transfer Binder] FEDERAL SECURITIES LAW REPORTS (CCH) ¶ 85,051.

7. See Lewis D. Solomon, Donald E. Schwartz, Jeffrey D. Bauman, and Elliott J. Weiss, *CORPORATIONS LAW AND POLICY*, Pg. 579 (3d ed. 1994).

8. Exchange Act Rule 14a-6. Those soliciting must also file copies with any exchange on which the company's securities are listed. *Id.*

9. See *supra* Section 2.02.

solicitation rules. Nor is it enough to do this and supplement the notice by including a telephone number from which shareholders may request the proxy statement on paper. The electronic proxy statement is effectively furnished only to those shareholders who have given informed consent to receive the proxy statement electronically, or where evidence exists that the shareholder actually accessed the proxy statement electronically.¹⁰

Even where a shareholder has agreed to receive of the company's proxy statement through the company's Website, the issuer must still give effective notice that the proxy statement is available. Notice by publication in a newspaper such as the *Wall Street Journal*, on a Website, or on an electronic bulletin board is insufficient to make the shareholder aware of the proxy statement's availability. More direct delivery of notice is required. Postal mail, or an e-mail message after the shareholder has agreed to that form of communication, are examples of effective notice.¹¹

Each shareholder must have notice that the proxy statement is available within close proximity to the time that the shareholder's action is requested. Thus a consent form signed by the shareholder indicating a date seven months in the future, for example, on which the company expects to make the proxy statement available on its Website, is likely to be insufficient notice. However, other grounds, such as a history of communications with the specific shareholder, might create a reasonable expectation that delivery via the Website is effective for this shareholder.¹² Even when a shareholder has previously consented to receive a proxy statement through the issuer's Website, the shareholder is entitled to a paper copy. Shareholders do not need to withdraw their general consents to receive all documents electronically in order to request the paper proxy statement (for example, because the shareholder's computer is temporarily out of service).¹³ The issuer should leave the proxy statement posted on the Website until after the shareholders cast their votes and the meeting adjourns.¹⁴

10. See *Use Of Electronic Media For Delivery Purposes*, SEC Release No. 33-7233 (Oct. 6, 1995), Example (23), FEDERAL SECURITIES LAW REPORTS (CCH) Vol. 1, ¶ 3200 [hereinafter cited as *Electronic Media For Delivery*].

11. *Id.* at Example (24).

12. *Id.* at Example (25).

13. *Id.* at Part II(B) and Example (26).

14. *Id.* at Part II(B), n. 26.

11.02 Annual Reports To Shareholders

The proxy statement for each shareholders' annual meeting at which directors will be elected must be accompanied or preceded by an annual report to shareholders.¹⁵ The annual report may be furnished electronically, as the proxy statement and form of proxy were.¹⁶ When issuers furnish the annual report through a Website (to those who have consented to receive them in that way), the SEC has indicated that the annual report should remain available on the site "for a sufficient length of time for delivery to be satisfied."¹⁷ Regardless of how long a "sufficient length of time" is, companies typically leave their annual reports posted on their Websites for at least a year, generally as part of their investor relations pages.¹⁸

Because extensive photographs and charts often are used in annual reports, they are more difficult to transmit over an Internet Website than is the typical proxy statement. Therefore, issuers may wish to continue sending annual reports in the traditional paper form or—as one issuer did—on a CD-ROM disk as well as on paper.¹⁹ Properly equipped shareholders can read the disk on their computer screens. Delivery on CD-ROM or videotape is permissible to those shareholders who have agreed to receive the annual report in that form.²⁰

When an issuer mails shareholders the annual report, whether on paper, CD-ROM disk, or videotape, but delivers the proxy statement to some shareholders through the issuer's Website, timing problems arise. Rule 14a-3(b) has been interpreted to require that the annual report be mailed in a way which will reasonably guarantee its arrival before or at the same time the proxy statement arrives.²¹ Care must be taken to comply with these timing requirements when delivering only the proxy statement through the Internet. For example, a notice that the proxy statement is available on the issuer's Website, which would normally be sent to those who have agreed to receive their proxy statements in that way, should probably only be sent along with the annual report mailed to shareholders. Because the SEC has not addressed the

15. Exchange Act Rule 14a-3(b).

16. See *id.* at Example (29).

17. See *id.* Section II(B).

18. Investor relations Websites are discussed more fully *supra* in Chapter 10.

19. See Jack Scis, *First Union Offering Annual Report On Disk*, GREENSBORO (NC) NEWS & RECORD, March 15, 1996, Pg. B8.

20. See *Electronic Media For Delivery*, *supra* note 10, Example (30).

21. See *Interpretation Of Proxy Rules*, SEC Release No. 34-7078 (May 15, 1963), FEDERAL SECURITIES LAW REPORTS (CCH) Vol. 3, ¶ 24,103; *Ash v. GAF Corp.*, 723 F.2d 1090, 1093-94 (3d Cir. 1983).

issue, prudent issuers might not put the proxy statement on the Website at all until the date on which it is reasonable to expect that shareholders have received their mailed annual reports.

Under Rule 14a-3(b)(10), the issuer's proxy statement or annual report must indicate that the company will provide its most recent Form 10-K (or 10-KSB), upon written request and without charge, to each shareholder being solicited. The issuer presumably may provide Form 10-K electronically to those who consent to receive it in that form.²² Where the proxy statement or annual report to shareholders is distributed electronically, the issuer could provide a hypertext link from that document to the full electronic Form 10-K. Even when proxy statements and annual reports are distributed only on paper, requests for a paper copy of the Form 10-K will likely be minimized if those other paper documents give the EDGAR Website URL or the issuer's Website address, where users can access an electronic Form 10-K.

11.03 Annual Reports And Proxy Statements To Employee/Shareholders

Companies with widespread e-mail systems do not need their employee/shareholders' consent for electronic distributions. Assuming certain conditions are met, the SEC allows companies to presume their consent.²³ Hewlett-Packard is experimenting with sending an electronic version of its annual report (though not the proxy statement or card) to its employee/shareholders. Most HP employees have company-provided e-mail address and Internet access. The 50-80,000 employee/shareholders will get an e-mail notice showing the Internet address of the annual report. The e-mailgram contains an icon; clicking on it launches a Web browser, which takes the employee directly to the annual report on HP's public Website. Employees can view the report in HTML format, complete with pictures and graphics. (For security purposes, all the documents on the HP site are "read-only" to prevent tampering.)

Any company planning a similar electronic distribution of its annual report needs to coordinate carefully the timing of the electronic distribution and its paper proxy statement, since the proxy statement must be "accompanied or preceded" by an annual report.²⁴ To be certain it satisfies this condition, the company should post its annual report and send out the e-mail notice a few days before mailing the proxy statement and card, as Hewlett-Packard intends to do.

22. The elements of effective electronic delivery are outlined *supra* in Section 2.02.

23. See *supra* Section 7.03.

24. Exchange Act Rule 14a-3(b).

JP Morgan electronically distributed its proxy statement to employees who held company stock in the 401(k) and deferred profit-sharing plans. It did not distribute an electronic proxy card; doing so would have required it to individualize the e-mail with the number of shares each employee owned. The company was also concerned that employees, thinking the company would see how they had voted, might be reluctant to vote electronically on sensitive proxy issues. Although most companies are considering the possibility, JP Morgan chose not to distribute its annual report electronically. It instead wanted the employees to be able to hold and read the glossy, picture-filled, paper document. The company also believed that employees would take the printed annual report home and show it to family members and friends.²⁵

11.04 Shareholder Proposals In Electronic Forums

An eligible shareholder of a company subject to the proxy rules can compel management, under Exchange Act Rule 14a-8, to include proposals that the shareholder wants to introduce at the company's annual meeting on the company's proxy statement and form of proxy. A shareholder who has held at least 1 percent or \$1,000 in market value of the company's stock for at least one year is eligible to make use of this shareholder proposal rule. Exclusions in the rule permit management to refuse to include certain kinds of shareholder proposals. While the rule is not available for contested elections or counterproposals,²⁶ it has traditionally been used for a wide variety of other purposes. Typical shareholder proposals relate to corporate governance matters, issues of executive compensation, or the corporation's role in promoting various social and political policies.²⁷

Amendments in 1992 to the SEC's proxy rules encourage shareholders whose proposal will be included in management's proxy statement to communicate with fellow-shareholders in other ways.²⁸

25. *Electronic Delivery Of Stock Plan Prospectuses, Proxy Statements, And Annual Reports—What Companies Are Doing*, THE CORPORATE EXECUTIVE, November/December 1996, Pgs. 4-6.

26. See Exchange Act Rule 14a-8(c)(8)-(9).

27. For an extensive discussion of Rule 14a-8, see Harold S. Bloomenthal and Samuel Wolff, SECURITIES AND FEDERAL CORPORATE LAW, Vol. 3C, § 13.38 (1996). In preparing a report to Congress (as mandated by the National Securities markets Improvement Act), the SEC posted a questionnaire in February 1997, directed to the public at large, on its Website. The questionnaire sought suggestions on how to improve the shareholder proposal process. *SEC Posts Questionnaire On Shareholder Proposal Process*, SECURITIES REGULATION & LAW REPORT, Vol. 29, Pg. 200 (1997).

28. See *Regulation Of Communications Among Shareholders*, *supra* note 6.

Normally, anyone who communicates with shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy is engaged in a solicitation and must first file a proxy statement with the SEC.²⁹ However, Rule 14a-2(b) excludes from that filing requirement communications between shareholders who do not actually seek proxy authority from others and have no substantial special interest—different from that of other shareholders—in the solicitation's subject matter. In adopting these provisions of Rule 14a-2(b), the SEC indicated that mere sponsorship of a Rule 14a-8 proposal does not normally create substantial interest and would not preclude the shareholder from communicating with others about the proposal, so long as the shareholder does not seek proxy voting authority.³⁰

In the past, shareholders who used Rule 14a-8 often had no other cost-effective means of communicating with a large number of other shareholders about the proposal to be introduced. Internet technology now creates an inexpensive forum in which shareholder proponents may encourage fellow-shareholders to support a proposal through a vote on management's proxy card. Rule 14a-2(b) permits the use of Internet technology in this way without requiring the proponent to file and disseminate its own proxy statement. Often the shareholder submitting a proposal under Rule 14a-8 is an institutional investor or an organized nonprofit group that generally supports certain public policy initiatives.³¹ Proponents of these sorts often maintain their own homepages on the World Wide Web. Particularly since management need not allot the shareholder proponent more than 500 words in management's proxy statement for its proposal and supporting statement,³² the Website becomes a useful mechanism for disseminating additional information. Indeed, apparently nothing prevents the proponent from including in its 500-word submission in management's proxy statement a reference to its own homepage, with a suggestion that shareholders obtain additional information at that Website.

An institutional shareholder proponent that beneficially owns over \$5 million in market value of the company's shares, relying on Rule 14a-2(b)(1), might post information on its Website regarding its shareholder proposal. Rule 14a-6(g) requires it to file with the SEC and

29. See Exchange Act Rule 14a-1(l); Rule 14a-3. See also *Long Island Lighting Co. v. Barbash*, 779 F.2d 793 (2d Cir., 1985).

30. See *Regulation Of Communications Among Shareholders*, *supra* note 6; Bloomenthal and Wolff, *supra* note 27, § 13.38[16].

31. See, e.g., Mark S. Porter, *Institutional Investors Make Voices Heard*, INVESTMENT DEALERS' DIGEST, June 10, 1996, Pg. 2.

32. Exchange Act Rule 14a-8(b)(1).

each stock exchange on which the company's shares are listed a Notice of Exempt Solicitation, along with copies of the material posted on the Website. The shareholder must give the SEC and exchanges the information within three days after first making the information available to other shareholders. This requirement was designed to prevent secret negotiations between institutional shareholders to determine the outcome of a vote.³³ Thus Rule 14a-6(g)(2) exempts from the filing requirement various kinds of publicly released communications. However, the exemption language does not appear broad enough to cover material publicly available on a Website.

Individual shareholders who submit proposals under Rule 14a-8 often do not have their own homepage on the World Wide Web. They might, however, use newsgroups devoted to discussing investment matters to furnish additional information regarding the shareholder proposal. Indeed, individual shareholder proponents might indicate in their 500-word submissions in management's proxy statement that further discussion of the proposal is invited on a specific Usenet newsgroup or through a discussion group on a particular commercial online service.

Management is not limited in how much space it can use in its proxy statement to explain its opposition to a shareholder proposal included under Rule 14a-8.³⁴ If management also wants to put information against the shareholder proposal on the company's Website, it may do so once it has mailed shareholders the proxy statement.³⁵ However, the information posted on the Website presumably is "other soliciting material," which the company must file with the SEC (and exchanges on which the company is listed), pursuant to Rule 14a-6(b), not later than the day on which it first posts on the Website. If, after viewing the Website, a shareholder requests further information, Rule 14a-6(f) exempts management from having to file with the SEC and exchanges any individual e-mail response the company makes to the shareholder. It is less clear whether management would need to file a broadly disseminated e-mail response made to a newsgroup or discussion group relating to a shareholder proposal. Nevertheless, that broad response seems more like the widely distributed documents that the company must file as additional soliciting material, than like the individualized replies Rule 14a-6(f) contemplates.

33. See *Regulation Of Communications Among Shareholders*, *supra* note 6.

34. Under Exchange Act Rule 14a-8(e), the company must provide the shareholder proponent, before mailing the proxy statement, with a copy of the management's statement in opposition that will appear in the proxy statement.

35. See Exchange Act Rule 14a-3(a). Compare Rule 14a-3(f).

CHAPTER 2

PROCEDURES FOR ELECTRONIC POSTING AND DELIVERY OF SEC DOCUMENTS

2.01 Blurring The Distinction Between Filing And Delivery Requirements In An Electronic Era

The federal securities laws draw a sharp distinction between trading transactions on the one hand, and distributions on the other. What the law requires of an issuer differs, depending in general on whether the issuer at the time is offering its own securities for sale publicly. For the investor trading existing stock in a publicly held company, a repository of accurate, up-to-date information is available to anyone, thanks to the disclosure requirements of the Securities Exchange Act of 1934. The issuer must file the specified information with the SEC but does not have to deliver it directly to investors. The 1934 Act assures its currency and availability to the public by requiring companies to file reports with the SEC periodically on Forms 10-K, 10-Q, and 8-K,¹ although for certain information—proxy statements and annual reports—the issuer must actually deliver the information to any who are already shareholders in the publicly held company.²

Whenever an issuer seeks to raise new capital through a public distribution of its securities, the Securities Act of 1933 imposes even more elaborate disclosure and information-delivery requirements. These special requirements, which also apply to secondary distributions by large shareholders and others, are designed to protect prospective investors from being pressured into making hurried or uninformed investment decisions, in the face of the special selling efforts generally employed by underwriters. Whether a primary or a secondary distribution, federal law requires the issuer to file a registration statement and in fact deliver much of its contents to potential

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1. For smaller businesses, Forms 10-KSB and 10-QSB are available as alternatives to the more complex Forms 10-K and 10-Q.
 2. Exchange Act §§ 12, 13, 14. See generally Thomas L. Hazen, SECURITIES REGULATION (Practitioner's Edition), Vol. 1, §§ 9.2-9.4 (3d ed. 1995).

purchasers, in the form of a statutory prospectus.³ The Securities Act drafters envisioned delivery of paper prospectuses to investors, typically by mail. With the advent of computer technology, the SEC now interprets the 1933 Act to permit prospectuses delivered by electronic means, provided the delivery procedures are essentially equivalent to those traditionally used for paper prospectuses.⁴

Modern electronic transfer of information has blurred—but not extinguished—the difference between access to information and actual delivery of it to the investor. In a paper-based world, the distinction was clear. Form 10-K annual reports and similar documents stuffed bulging file cabinets at the SEC's several public reference rooms. Access to the documents required someone to locate and physically pull the issuer's file, then photocopy or somehow reproduce the relevant reports if an investor wished to read them outside of the confines of the SEC's facilities.⁵ A 1933 Act prospectus, by contrast, was sent to each purchaser or potential purchaser by mail. It would arrive in the mailbox, professionally printed, ready to be perused at the investor's leisure.

Today the SEC file cabinets are mostly retired. Annual and other periodic reports as well as 1933 Act registration statements are filed and stored in electronic format on computers whose physical location is irrelevant. Through EDGAR (the SEC's Electronic Data Gathering, Analysis, and Retrieval system), all these documents are readily available to anyone with access to the Internet or to a number of EDGAR redistributors, such as Nexis or Westlaw. While EDGAR makes it much more convenient for an individual investor to pull a document from the SEC's files, it still does not ensure "delivery-in-fact" of the document without investor initiative.⁶ If the issuer were to send an electronic prospectus by e-mail to an investor who had requested its delivery in that form,⁷ a clear parallel to paper-based delivery by mail would exist. Does delivery occur if an issuer sends an e-mail message, informing the investor that a prospectus is available on the World Wide Web and giving instructions on how to access it? That is a more difficult question.

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3. For a full discussion of the registration requirements of the Securities Act of 1933, see Hazen, *supra* note 2, at Chapters 2 and 3.
 4. See *infra* Section 3.02.
 5. Current shareholders generally can request a copy of the Form 10-K or 10-KSB directly from the issuer. Securities Exchange Act Rule 14a-3(b)(10).
 6. For a discussion of the EDGAR system, see *infra* Chapter 15.
 7. See Example (8) in *Use Of Electronic Media For Delivery Purposes*, SEC Release No. 33-7233 (Oct. 6, 1995), FEDERAL SECURITIES LAW REPORTS (CCH) Vol. 1, ¶ 3200 [hereinafter cited as *Electronic Media For Delivery*].

The SEC has developed elaborate guidelines to help determine where the line lies between "delivery" and "mere access," for purposes of the 1933 Act delivery requirements.⁸ Guidelines covering electronic delivery of prospectuses were initially formulated in an SEC no-action letter issued to Brown & Wood in February 1995.⁹ The SEC subsequently issued lengthy, seminal interpretive releases in October 1995 and May 1996 on using electronic media for delivery, which relaxed some of the requirements for prospectus delivery that *Brown & Wood* had imposed.¹⁰ The Commission, however, stated that while not required, issuers could continue to follow the "generally more stringent requirements" in *Brown & Wood*.¹¹

2.02 Fundamental Principles Regulating Electronic Delivery Of SEC Documents

Documents such as Forms 10-K, which are filed with the SEC but which need not actually be delivered to shareholders, pose few special problems when they are posted or disseminated electronically. The major issues of electronic dissemination are implicated by documents such as 1933 Act prospectuses, proxy statements, and annual reports to shareholders, which must in fact be sent or delivered to investors. The SEC's goal has been to structure electronic delivery in a way that fully parallels paper delivery, requiring the Commission to give careful attention not just to the potentials of electronic technology but also to its present-day limitations.

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8. *Id.*; and *Use Of Electronic Media By Broker-Dealers, Transfer Agents, And Investment Advisers For Delivery Of Information*, SEC Release No. 33-7288 (May 9, 1996), FEDERAL SECURITIES LAW REPORTS (CCH) Vol. 1, ¶ 3201 [hereinafter cited as *Electronic Media By Broker-Dealers*].
 9. *Brown & Wood* (Div. Corp. Fin. No-Action Letter, Feb. 17, 1995), [1994-1995 Transfer Binder] FEDERAL SECURITIES LAW REPORTS (CCH) ¶ 77,000.
 10. See *Electronic Media For Delivery*, *supra* note 7, and *Electronic Media By Broker-Dealers*, *supra* note 8. These two releases, along with relevant SEC no-action letters [all are reprinted in Appendices B and C *infra*], are the most important primary sources on the electronic delivery of SEC documents and related issues. See generally Alexander C. Gavis, *The Offering And Distribution Of Securities In Cyberspace: A Review Of Regulatory And Industry Initiatives*, BUSINESS LAWYER, Vol. 52 (1996), Pgs. 325-36. The Commodity Futures Trading Commission has also issued a release on the use of electronic technology, *Interpretation Regarding Use Of Electronic Media By Commodity Pool Operators And Commodity Trading Advisors* (CFTC, Aug. 14, 1996), COMMODITY FUTURES LAW REPORTS (CCH) ¶ 26,756.
 11. *Electronic Media For Delivery*, *supra* note 7, at Part I.

2.02 [a] Access

The US Postal System is readily available to everyone, but similar universal access to computer technology does not yet exist. Even where access is available, often it is difficult to reach particular documents or databases. The SEC's October 1995 release, *Use Of Electronic Media For Delivery Purposes*, therefore insists that electronic delivery may replace traditional paper delivery by mail only where the intended recipient has comparable access to cyberspace. "Comparable" is not always a simple matter; for example, even lengthy or burdensome procedures to locate the document once the recipient is online are enough to nullify the comparability of the access.¹²

Using e-mail to transmit long documents such as prospectuses or proxy statements sometimes poses an additional problem: the document's integrity, which the SEC had not yet addressed at the time of publication. Some professional e-mail routers break up long documents into parts and deliver them in a different order than their appearance in the original document. This may lead to investors' claims that the SEC delivery requirements were not met.¹³

The SEC has also taken into account the ephemeral nature of electronic information. Therefore, it insists that in order for electronic delivery to be deemed effective, the recipient should be able to download the document or in some other way have ongoing access to it that is equivalent to retaining personally a paper copy of the document. Moreover, the document must remain accessible electronically for as long as the delivery requirement applies to it.¹⁴

While the SEC seems generally willing to accept the fiction of a perfectly operating postal system,¹⁵ it is not eager to adopt similar counter-factual presumptions about computer technology. It insists that persons who are entitled to delivery of documents must, in the case of system failure or computer incompatibility, be able to receive a paper version of the document. The SEC, moreover, has gone to elaborate lengths to mitigate any discomfort investors may experience when transitioning to the new technology. Even when the investor has previously consented to receive a document electronically and no technological impediments have intervened, the one providing the electronic document must accommodate any change of heart by the investor. Under the SEC guidelines, an investor who is entitled to

12. *Id.* at Part II.B.

13. See Deepak Gopinath, *Net Gain: The Electronic Prospectus*, TECH NOTES, Oct. 1995, Pg. 23.

14. *Id.* at Part II.B.

15. See *infra* Section 2.02 [c], discussing evidence of delivery.

delivery of a document always retains the right to receive a paper version of that document as well.¹⁶

2.02 [b] Notice

Receipt of a paper document through traditional mail operates to notify the recipient that new information has been sent and that the investor may need to take some action within a certain period of time, based on that information. The SEC guidelines insist that electronic delivery provide similar notice. Sending a document by e-mail to an investor who has agreed to receive it in that format creates comparable notice, but merely posting a document on an Internet Website, without more, would not. An e-mail message or a message transmitted by paper through the regular mail, alerting the investor to the new information, is required.¹⁷

2.02 [c] Evidence of delivery

The SEC treats delivery by traditional mail as the default rule.¹⁸ It presumes that the postal service is reliable. The *Use Of Electronic Media For Delivery Purposes* release states that providing information by mail creates reasonable assurance that it has been delivered.¹⁹ The SEC also presumes that everyone has implicitly consented to receive documents by postal mail and that investors regularly check their mail boxes. In that release, the SEC appears unwilling to make the same assumptions about delivery by e-mail or facsimile, even when the sender knows that the intended recipient has a fax number or an e-mail account.²⁰ The investor must consent specially to receive documents by fax or e-mail; sending documents through those means without a prior consent will not satisfy the delivery requirements unless other evidence of the investor's actual receipt can be shown. However, once consent is given, the SEC will presume at least that documents sent by fax to the appropriate telephone number have

16. *Electronic Media For Delivery*, supra note 7, at Part II.B.

17. *Id.* See also *Electronic Media By Broker-Dealers*, supra note 8, at n.21.

18. The SEC releases refer explicitly to delivery of paper documents through "the postal mail system." *Id.* at Part II; *Electronic Media By Broker-Dealers*, supra note 8, at Part II.A. However, it seems likely that the SEC would consider delivery of paper documents through Federal Express or similar reliable private carriers as being equivalent to delivery through the US Postal Service.

19. *Electronic Media For Delivery*, supra note 7, at Part II.C.

20. The one exception to this, announced in the May 1996 *Electronic Media By Broker-Dealers* release, involves delivery to employees of documents relating to employee stock option or purchase plans through internal company e-mail systems. See *infra* Section 7.04.

been received,²¹ a similar presumption applies to e-mail messages as well.²²

When a document is not specifically directed to an investor's e-mail account but instead is merely made available online, either through a proprietary service or on a World Wide Web site, the disseminator has not achieved effective delivery. For effective delivery, there must be something more—either use of an informed-consent-and-notice procedure, or evidence that the investor in fact accessed the document.

Consent and notice

The SEC has focused in some detail on the components of informed consent to receive documents electronically. The investor should be told of the specific source through which the document will be available and must consent to use of that specific source (not just to electronic delivery in general). For example, the disseminator must tell the intended recipient whether a document will be available on the World Wide Web or only through a particular commercial service.²³ The investor ought to be apprised specifically if the document will be available only in a format requiring special software to read it, such as the Adobe Acrobat PDF format;²⁴ and of the potential costs of accessing the document (e.g., probable charges for online time); the length of time the consent will be effective; and the types of documents covered by the consent.²⁵ Where securities are being purchased in joint names, such as husband and wife, both spouses should consent to electronic delivery in order for it to be effective.²⁶ The SEC has stated that in most cases, when the request for information is made through electronic medium, consent to receive the information electronically may be presumed.²⁷

An investor may give consent to receive documents electronically to the issuer, an underwriter, or a brokerage firm, and all may rely on a consent given to any one of them. When documents will be delivered by means of a commercial service provider, the consent may be given to the service provider.²⁸ In the February 1995 *Brown & Wood* no-action letter, the SEC insisted that any delivery consent be separate from the

21. *Electronic Media For Delivery*, *supra* note 7, at Part II.C and Examples (32), (33).

22. See *id.* at Example (34).

23. See *id.* at Part II.C n.29.

24. For more on posting documents in PDF format, see *infra* Section 2.03.

25. *Electronic Media For Delivery*, *supra* note 7, at Part II.C, n.29.

26. *Id.* at Example (6).

27. *Electronic Media By Broker-Dealers*, *supra* note 8, at n. 23.

28. *Electronic Media For Delivery*, *supra* note 7, at Part II.C.

agreement to subscribe to the service or any other agreement regarding use of the provider's service.²⁹ This appears still to be the SEC's position. According to one of the October 1995 release examples, merely placing a consent to receive documents by e-mail in the general subscription agreement for an online service would not be sufficient.³⁰

The administrative challenges posed by soliciting, collecting, and maintaining shareholder consents deter many companies from making electronic distributions to their public shareholders. However, while the development of consent procedures is still in its infancy, attractive opportunities exist for the effective use of informed consent. A broker-dealer might obtain consents from its existing customers to permit delivery of 1933 Act prospectuses when the customer purchases registered securities through the firm³¹ or to pass through proxy materials for securities held in street name.³² An issuer could get consents from its shareholders to deliver future proxy statements and annual reports to them electronically.³³ The shareholder could request delivery through a consent form included with any annual proxy solicitation. Mutual funds might obtain consents from customers, through a special mailing, to permit the future delivery of reports and updated prospectuses electronically.³⁴

In early 1997, Intel Corporation solicited its registered shareholders (though not its beneficial holders) for their consents to receive the annual report and proxy statement over the Internet. Approximately 7,000 registered shareholders agreed, choosing to see the documents only electronically. When the documents are available on Intel's Website, the company will so inform these consenting shareholders. Although the shareholders can download a copy of the proxy card from the Website, they cannot vote electronically. The actual proxy card will still be on paper and must travel back to Intel by postal mail.³⁵

John R. Hewitt Esq. of Mayer Brown & Platt, New York, NY, has developed a sample letter and consent form, which a company might use when seeking consent to deliver proxy statements and annual

29. *Brown & Wood* (Div. Corp. Fin. No-Action Letter), Feb. 17, 1995, [1994-1995 Transfer Binder] FEDERAL SECURITIES LAW REPORTS (CCH) ¶ 77,000.

30. *Electronic Media For Delivery*, *supra* note 7, at Example (37).

31. See *infra* Chapter 3.04[b].

32. See *infra* Section 10.06.

33. See *infra* Sections 10.01 and 10.02.

34. See *infra* Section 9.04.

35. *Intel Begins Semi-Internet Proxy Process*, INVESTOR RELATIONS BUSINESS, March 10, 1997, Pg. 14.

reports electronically.³⁶ [See Figure 2a, XYZ Widgets sample consent form] A different consent form, used by First Union Corp., seeks consent to deliver the annual report in the investor's choice of formats. [See Figure 2b, First Union consent form] After consenting, the investor must receive timely and adequate notice that the electronically disseminated information is in fact available. The disseminator might send that notice electronically as well, or through traditional mail or similar channels.³⁷ [See Figure 2c, Intel Notification To Obtain Via The Internet] Issuers should remember that consent plus notice will not be sufficient if unduly burdensome procedures—such as moving through a confusing series of ever-changing menus—are necessary before one can access the electronic document.³⁸

Other evidence of delivery

Where the investor has not given prior consent, electronic delivery is still effective if there is evidence that the investor in fact accessed a document electronically.³⁹ Some commercial online systems provide the issuer or underwriter with electronic confirmation that the investor has accessed, downloaded, or printed a document posted on that system, which constitutes evidence that the document has effectively been delivered to the investor.⁴⁰ Alternatively, some e-mail programs contain a feature by which the message sender is automatically notified when the recipient opens the sent message.⁴¹ Using this type of reading notification creates evidence that an unsolicited prospectus sent to an investor by e-mail has been delivered.⁴² However, the notification available through some e-mail programs⁴³—that the message containing the prospectus has been received into the addressee's e-mail account, but with no indication of whether the message was ever accessed by the addressee—would not create a sufficient evidence trail.

36. John R. Hewitt, *Electronic Delivery Accompanied By Procedural, Record Keeping Hurdles*, OFF-LINE, Spring 1996, Pg. 8. Reprinted with permission from Mr. Hewitt.

37. See *Electronic Media For Delivery*, *supra* note 7, at Example (10).

38. *Id.* at Part II.B, n.24. For discussion of the use of consent and notice procedures by mutual funds, see *infra* Sections 9.01 and 9.04.

39. See *Electronic Media For Delivery*, *supra* note 7, at Part II.C.

40. See *Electronic Media For Delivery*, *supra* note 7, at Example (36).

41. See Ed Krol, *THE WHOLE INTERNET*, Pg. 123 (2d ed. 1994).

42. See *Electronic Media For Delivery*, *supra* note 7, at Part II.C.

43. See Krol, *supra* note 41, at Pg. 123.

XYZ Widgets, Inc.
100 Main Street — Anytown USA

Dear Shareholder:

XYZ Widgets, Inc. ("XYZ") is pleased to announce "WidgetLink," a new shareholder communications system that will permit XYZ shareholders to electronically access the most current company information as well as XYZ's annual reports, proxy materials, and Form 10-K's. WidgetLink uses the company's state of the art computer system to directly link its shareholders with XYZ's newly created Website.

XYZ's Web site provides this information in an easy to read, well-organized format which can be quickly converted to hard copy. Voting in corporate elections is as easy as printing the proxy card, completing it and returning it by mail. In fact, XYZ will soon have proxy voting by e-mail.

If you would like to participate in WidgetLink, you need only complete, sign and return the enclosed consent letter permitting us to link you to this system. The letter also requests certain information about your computer equipment, so that we can insure that it is completely compatible with WidgetLink. Please bear in mind that there is a charge to access the Web (either through an online service or an Internet Service Provider), and that some older computer equipment may not have the capacity to use WidgetLink.

In the consent letter, please also specify how XYZ is to notify you when new information is placed on WidgetLink; you have your choice of either e-mail or regular mail. The U. S. Postal Service will still be used for delivery of required documents to those shareholders not on WidgetLink.

Can we give you more information on WidgetLink? If so, please call the Investor Relations Department at 1 (800) 555-5555 or inquire at our Web site at <http://www.xyzwidgets.com>

Thank you for your interest and we'll see you on the Web!

Sincerely,
 John Doe

Senior Vice President, Investor Relations

Dear XYZ Widgets:

I want to use XYZ's Web site to receive all corporate documents from XYZ Widgets, Inc. ("XYZ"), including the company's annual report and proxy materials. I understand that XYZ will provide these documents as well as other important information on its Web Site.

I would like to begin utilizing XYZ's Web site on _____ (date) and understand that certain costs are involved in using XYZ's web site and printing documents from it.

Sincerely,

 John Q. Shareholder

(Please complete the following)

1. I would like to be notified when corporate information is placed on XYZ's Web site by (check one):
 _____ e-mail (please provide: _____) _____ regular mail.
2. Name of Online Service or Internet Service Provider: _____.
3. Computer Hardware:
 - a. Computer: _____
 - b. Printer: _____
 - c. Modem: _____

Figure 2a: XYZ WIDGETS sample consent form

This past year First Union Corporation (the "Corporation") led the industry in providing innovative communications tools for its shareholders in the form of a compact disk with four basic features: a 1995 Summary Annual Report, Spread Sheet Files, an Internet Browser for PC and a Multimedia Presentation. This compact disk heralds a new era of more cost-effective, ecologically sound and, we hope, ultimately better investor communications. The personal computer has provided alternative ways for investors to receive communications from the company through digital and electronic media.

The purpose of this form is to determine how you would like to receive annual reports from the Corporation in the future. Your selection will be implemented beginning with the 1996 Annual Report to Shareholders, which is currently expected to be mailed during the first two weeks of March 1997. The selection of electronic-based media such as compact disk or Internet Web Sites will eliminate the expense to the Corporation of printing and mailing the 1996 Annual Report to shareholders who choose such media.

Please select one of the following methods of receiving future annual reports from the Corporation

- Download from First Union's home page!
Internet address: <http://www.firstunion.com/>
- Compact disk containing the annual report
- Annual report printed on paper
- Annual report printed on paper and on a compact disk

By signing and returning this form, I consent to receiving future annual reports in the above manner commencing with the 1996 Annual Report. In addition, please provide the following information so that your preferred method of delivery for future annual reports to shareholders can be properly recorded:

Signature _____ Please enter my name in the drawing for a new laptop PC (approx. computer)

Name (Please Print Carefully) _____

Social Security No. _____ Please do not enter my name in the drawing for a new laptop PC (approx. computer)

Address _____

City _____

State _____ Zip Code _____

Email Address _____ Employee, director or officer of the Corporation (please enter telephone for the company)

Telephone Number _____

Shareholders who need to receive will continue to receive annual reports on paper. Shareholders requesting the method of delivery for their 1996 annual report will be mailed from the date paper copies are mailed until the date of the Annual Meeting. Shareholders who wish to be mailed in April 1997 should submit this form by mail to: 1400 Lenoir Street, Charlotte, NC 28203-1136.

Figure 2b: FIRST UNION consent form

Intel Corporation
2200 Mission College Blvd.
P.O. Box 58119
Santa Clara, CA 95052-8119
(408) 765-8080

**NOTIFICATION TO OBTAIN THE
INTEL CORPORATION 1997 PROXY STATEMENT
AND
1996 ANNUAL REPORT TO STOCKHOLDERS
VIA THE INTERNET INSTEAD OF BY MAIL**

Recently, you consented to obtain the Intel Corporation 1997 Proxy Statement and 1996 Annual Report to Stockholders via electronic form on the Internet in lieu of having paper copies delivered to you. We are pleased to inform you that the proxy statement and annual report are now available through Intel's website on the Internet.

To view the Intel Corporation 1997 Proxy Statement, please access the following Internet address on the World Wide Web: www.intel.com/intel/finance/proxy97/

To view the Intel Corporation 1996 Annual Report to Stockholders, please access the following Internet address on the World Wide Web: www.intel.com/intel/annual96/

Your proxy card is enclosed with this notice. Your vote is important to us. Please sign, date and return the proxy card in the enclosed postage prepaid envelope as soon as possible.

There may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, that must be borne by the stockholder.

You may still choose to receive paper copies of the Proxy Statement and Annual Report to Stockholders by calling Harris Bank at (800) 298-0146 or by written request to:

Harris Trust and Savings Bank
P.O. Box A3504
Chicago, IL 60690-3504

Figure 2c: INTEL Notification

It is enough that a required document is delivered to the investor. Nothing forces the investor to read the document. For the traditional paper format, Section 5 of the 1933 Act is satisfied so long as the investor receives an envelope containing a final prospectus and supplemental selling material. If the electronic system provides evidence that the investor has accessed an electronic document (e.g., supplemental selling material) containing a hypertext link to a second document (e.g., a prospectus), this seems equivalent to the investor receiving both documents in a single envelope, and it operates as evidence that the second document (the prospectus) was delivered.⁴⁴ If an investor returns an application form that was available only by accessing a particular electronic document (e.g., a prospectus), this serves as evidence that the electronic document has been delivered.⁴⁵

2.03 Placing SEC Documents On A Website

Documents already filed with the SEC, such as Form 10-K reports, annual reports to shareholders, prospectuses, and proxy statements, can all be important components of an IR Website for the publicly held company. Beyond this, issuers can meet the SEC requirement for actual delivery of prospectuses, proxy statements, and annual reports by notifying investors who have consented to receive the documents electronically that a document is available at a particular location on the World Wide Web.⁴⁶

The simplest way to make an SEC document available through a Website is to provide a hypertext link to the document as it appears on the SEC's EDGAR site at www.sec.gov. However, in that form, the document is neither particularly attractive nor user-friendly. It appears in the plain ASCII format in which it was filed with the Commission, along with EDGAR tags that are embedded in the document.⁴⁷ [See Figure 2d, Time Warner proxy statement in ASCII] Where the document is long, navigating through it online in the EDGAR database becomes difficult. Therefore, other alternatives may be preferable, for example, posting the document in some form on the issuer's Website.

One popular alternative is to place the document on the Website and tag it in hypertext markup language (HTML). In this format, the document appears on the screen of the investor's Web browser in a more attractive style typical of Web documents. The content will be identical to that in the paper document that has been filed with the

44. *Id.* at Part II.C and Examples (15) and (35).

45. *Id.* at Part II.C and Examples (31) and (33).

46. See *infra* Section 3.04[b] for more on this procedure.

47. See *infra* Chapter 15 on EDGAR and EDGAR tagging.

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TIME WARNER INC.
75 Rockefeller Plaza
New York, NY 10019
PROXY STATEMENT

This Proxy Statement is being furnished to holders of common stock, par value \$1.00 per share ('Common Stock'), Series C Convertible Preferred Stock, par value \$1.00 per share ('Series C Preferred'), Series D Convertible Preferred Stock, par value \$1.00 per share ('Series D Preferred'), Series E Convertible Preferred Stock, par value \$1.00 per share ('Series E Preferred'), Series F Convertible Preferred Stock, par value \$1.00 per share ('Series F Preferred'), Series G Convertible Preferred Stock, par value \$1.00 per share ('Series G Preferred'), and Series I Convertible Preferred Stock, par value \$1.00 per share ('Series I Preferred,' and collectively, the 'Voting Preferred Stock'), of Time Warner Inc., a Delaware corporation (the 'Company'), in connection with the solicitation of proxies by its Board of Directors for use at the Annual Meeting of the Company's stockholders (the 'Annual Meeting') to be held on Thursday, May 16, 1996, at the Warner Bros. Studio, 4000 Warner Boulevard, Burbank, California 91522 (see directions on back cover), commencing at 10:30 A.M., local time, and at any adjournment or postponement thereof, for the purpose of considering and acting upon the matters set forth in the accompanying Notice of Annual Meeting of Stockholders.

This Proxy Statement and accompanying forms of proxy and voting instructions are first being mailed to holders of Common Stock and the Voting Preferred Stock on or about March 29, 1996.

VOTING AT THE ANNUAL MEETING; RECORD DATE; CONFIDENTIAL VOTING

Only holders of record of Common Stock and Voting Preferred Stock at the close of business on March 28, 1996, the record date, are entitled to notice of and to vote at the Annual Meeting. As of March 28, 1996, there were 392,930,713 shares of Common Stock and 33,941,300 shares of Voting Preferred Stock (3,264,508 shares of Series C Preferred, 11,000,000 shares of Series D Preferred, 3,250,000 shares of Series E Preferred, 3,226,792 shares of Series F Preferred, 6,200,000 shares of Series G Preferred and 7,000,000 shares of Series I Preferred) outstanding and entitled to be voted at the Annual Meeting.

Each holder of record of shares of Common Stock who is entitled to vote may cast one vote per share held on all matters properly submitted for the vote of the stockholders at the Annual Meeting. Each holder of record of shares of Voting Preferred Stock who is entitled to vote may cast two votes per share held on all matters properly submitted for the vote of the stockholders at the Annual Meeting.

The presence, in person or by proxy, of the holders of a majority of the votes entitled to be cast by the stockholders entitled to vote generally at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting.

In accordance with the Company's confidential voting policy, all stockholder proxies, ballots and voting materials will be confidentially inspected and tabulated by independent inspectors of election and will not be disclosed to the Company except under certain limited circumstances.

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REQUIRED VOTE

Figure 2d: TIME WARNER proxy statement from EDGAR in ASCII

SEC, but the typeface and layout may be different.⁴⁸ HTML format permits the creation of hypertext links that facilitate jumping from the document's table of contents to the relevant portion of the document itself. This makes online navigation through the document much simpler. HTML format also permits the creation of other types of hypertext links in the document, e.g., to the full text of other documents that are incorporated by reference. [See Figure 2e, *Chrysler Annual Report index in HTML*, and Figure 2f, *Chrysler Annual Report letter to shareholders in HTML*]

Another alternative is to scan the document and place the image of each page sequentially on the appropriate Website as a GIF file (i.e., in Graphical Interchange Format). In this form, the document when accessed through a Web browser, will appear identical to the originally filed version. Scanning may be particularly useful for highly graphical documents, such as annual reports to shareholders. The major disadvantages of using this approach are that it does not permit extensive hypertext links to be created within the pages of the document, nor does it permit the reader to use a browser and find particular words within the document. Limited hypertext links can be incorporated, even when using the GIF format, by creating a separate HTML table of contents with links from it to particular scanned pages. [See Figure 2g, *Tel-Save prospectus in GIF*]

Finally, an SEC document may be placed on the Website in PDF (portable document format) using Adobe Acrobat software. [See Figure 2h, *Adobe Systems Form 10-Q in PDF*] This format retains the exact pagination and appearance of the original document and permits the user to page through the document with much greater ease than is possible using a scanned image in a GIF file. The investor is also able to search for particular words on each page of the document. Moreover, Version 3.0 of the Acrobat reader permits the embedding of hypertext links within PDF documents in the same manner as in HTML format, so the reader can easily jump from the PDF file to another document.⁴⁹

48. For a discussion of the permissibility under the Securities Act of using different formats in electronic prospectuses, see *infra* Section 3.06[b].

49. See Karen Bannan, *Doing Cartwheels On The Web*, PC MAGAZINE ONLINE, Oct. 10, 1996, available online at <www.pcmag.com/iu/docview/reviews/rv-acbat.htm>.

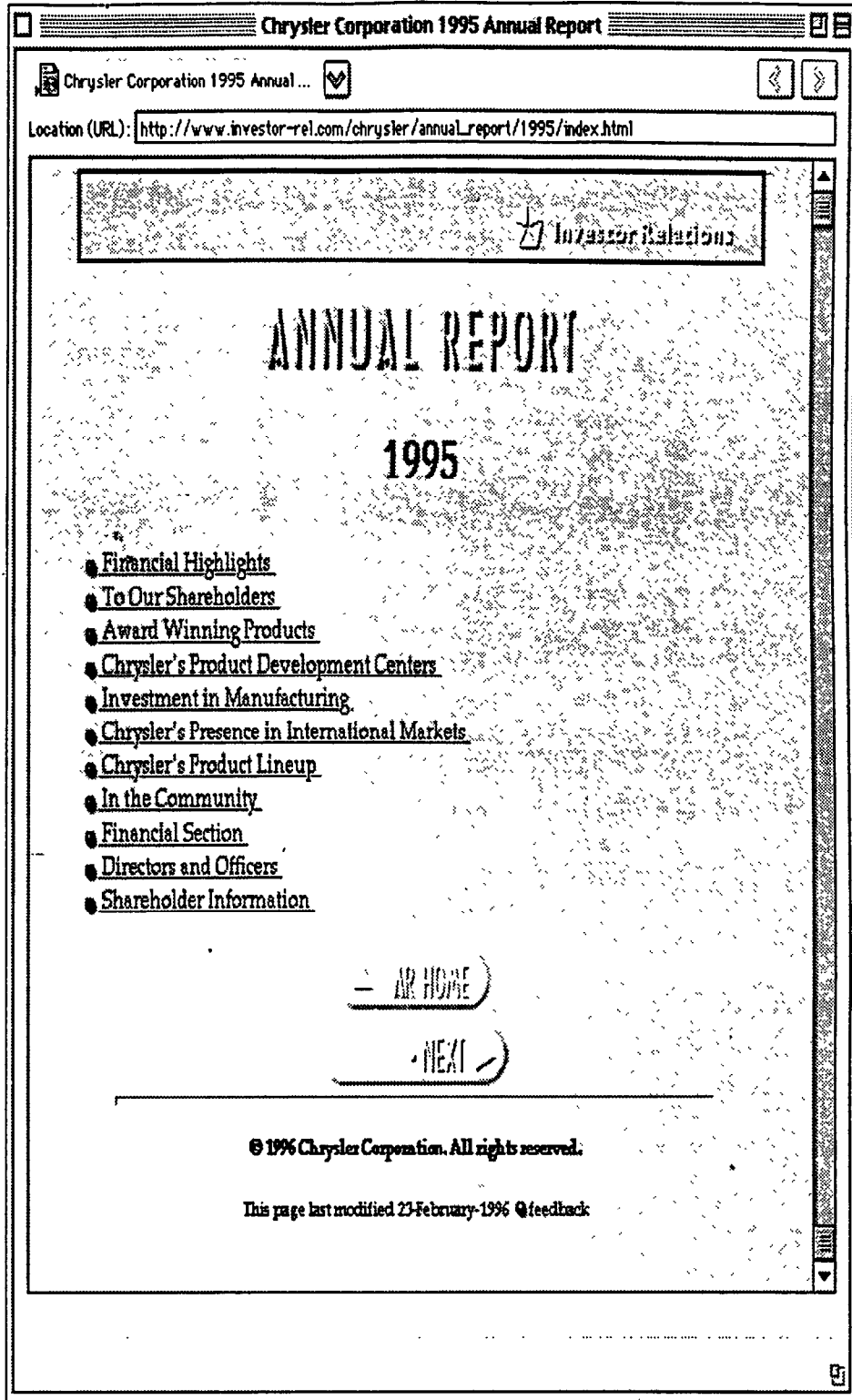


Figure 2c: CHRYSLER Annual Report index in HTML

Chrysler Corporation 1995 Annual Report

Chrysler Corporation 1995 Annual

Location (URL): http://www.investor-rel.com/chrysler/annual_report/1995/letter.html

ANNUAL REPORT

**TO OUR SHAREHOLDERS
CREATING AND DISTRIBUTING
SHAREHOLDER VALUE:
WE'RE NOW IN A POSITION TO MAXIMIZE BOTH.**

In 1995 Chrysler Corporation returned \$1.8 billion to shareholders through dividends and share repurchases. That's an amount equal to 88 percent of our after-tax 1995 earnings.

We increased our dividend twice last year to an annualized \$2.40 per common share—the highest rate in our history. We also repurchased \$1.1 billion of our common stock and recently announced our intent to repurchase an additional \$2 billion in 1996, subject to market and general economic conditions.

Those are numbers we're happy to report. We're also proud of our 1995 performance. Our net earnings topped \$2 billion and were the third-highest in Chrysler's history.

But we're even prouder of what we've been doing to increase the long-term value of your investment in Chrysler. After all, as one of our shareholders told us recently, "We didn't give you our money to have you simply turn around and give it back to us."

You won't read much more in this report on distributing shareholder value.

Our focus is on creating value. Over the long haul, outstanding products, delighted customers, profitable growth and reinvestment in the business are the requirements for building the value of your investment in our company.

It starts with financial stability, and from 1992 through 1994, we laid the foundation for enduring strength. We fully funded our pension plans, which had been among the largest unfunded plans in the industry. We paid down our debt. We built our cash balances. Those steps used more than \$14 billion of the cash generated from our automotive operations during that period. But it helped us accomplish an A-level credit rating and gave us newfound financial strength and flexibility.

In short, we've turned one of Chrysler's biggest historical weaknesses into one of its principal strengths for the future.

Staying competitive in the auto business is an enormously costly challenge. But putting money back into the business is the only way to be successful.

Sound financial footing is our launchpad for creating shareholder value. We're building value in a number of ways:

We're investing in our products. Minivans represent more than 20 percent of our volume, and in 1995 we launched our all-new minivans in three plants in three countries. It was a big job and one we had to do right. We did. The response from the public and the media has been enthusiastic, judging from the strong sales, numerous Car of the Year honors and the many positive letters we've received from our customers. Lost sales due to the minivan launch affected our profitability in 1995, but the changeover allowed us to set a new industry benchmark and add about 100,000 units of capacity.

We also strengthened our product lineup by adding the Chrysler Sebring Convertible and Plymouth Breeze. And to showcase our growing international presence, we introduced to the world a right-hand-drive version of the 1997 Jeep Wrangler® at the Tokyo Auto Show.

We're investing in product quality, which improved substantially in 1995. Our trucks—including Jeep® vehicles and minivans—were rated the best among domestic products in the J.D. Power and Associates Initial Quality Survey. Those vehicles represented 64 percent of our sales in 1995. J.D. Power also rated Chrysler best among all domestic and import auto companies in quality improvement. In the 1995 Strategic Vision Inc. Quality Index of "things gone right," our cars and trucks took three of the top five positions in 70 percent of the

Figure 2f: CHRYSLER Annual Report letter in HTML

Each Prospectus featured in Prospectus Net has been provided by its Issuer and/or its Underwriter(s). Prospectus Net Inc. is not acting as the agent of any such Issuer or Underwriter and makes no representation or warranty as to the contents of any such Prospectus. A registration statement relating to each Prospectus featured in Prospectus Net has been filed with the United States Securities and Exchange Commission.

PROSPECTUS

3,000,000 Shares



Common Stock

The 3,000,000 shares of common stock ("Common Stock") being offered hereby are being sold by Tel-Save Holdings, Inc., a Delaware corporation (the "Company"). Prior to this offering, there has been no public market for the Common Stock. See "Underwriting" for a discussion of the factors considered in determining the initial public offering price. Upon completion of this offering, Daniel M. Boridow, Chairman, Chief Executive Officer and founder of the Company, will beneficially own approximately 76% of the outstanding Common Stock. See "Risk Factors -- Control by Existing Stockholders; Anti-takeover Considerations."

The Common Stock has been approved for quotation on the Nasdaq National Market under the symbol "TALK," subject to official notice of issuance.

See "Risk Factors" beginning on page 4, for a discussion of certain factors that should be considered by prospective purchasers of the Common Stock.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discounts ⁽¹⁾⁽²⁾	Proceeds to Company ⁽³⁾
Per Share	\$13.75	\$0.9103	\$12.8397
Total ⁽⁴⁾	\$41,250,000	\$2,730,750	\$38,519,250

- (1) Excludes the value of warrants to purchase up to 200,000 shares of Common Stock to be issued to the Representative of the Underwriters as additional compensation.
- (2) The Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as stated in See "Underwriting."
- (3) Before deducting expenses estimated at \$1,000,000, which will be paid by the Company.
- (4) The Company has granted the Underwriters a 30-day option to purchase up to 400,000 additional shares in order to cover over-allotments, if any. If such option is exercised in full, the total Price to Public, Underwriting Discounts and Proceeds to Company will be \$47,017,001, \$3,140,743 and \$44,297,008, respectively. See "Underwriting."

This Common Stock is offered by the Underwriters, subject to prior sale, when, as and if delivered to and accepted by the Underwriters, and subject to the right of the Underwriters to reject any order in whole or in part and certain other conditions. It is expected that delivery of certificates for the shares of Common Stock will be made at the offices of Bear, Stearns Securities Corp., 1 Metropolitan Center Pl., Brooklyn, New York, 11201, as agent for Gerard Klauer Mattison & Co., LLC on or about September 23, 1995.

GERARD KLAUER MATTISON & CO., LLC

The date of this Prospectus is September 20, 1995

Figure 2g: TEL-SAVE prospectus page in GIF

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q**(Mark One).**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR
15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended August 30, 1996

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR
15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file Number: 33-6885

ADOBE SYSTEMS INCORPORATED

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction of
incorporation or organization)

77-0019522

(I.R.S. Employer
Identification No.)

345 Park Avenue, San Jose, California

(Address of principal executive offices)

95110-2704

(Zip Code)

Registrant's telephone number, including area code: (408) 536-6000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

<u>Class</u>	<u>Shares Outstanding August 30, 1996</u>
Common stock, no par value	72,073,604

The major drawback to using Adobe Acrobat is the necessity for users to download an Adobe Acrobat Reader (although it is available without cost, by downloading it from www.adobe.com/acrobat) to their own computer in order to view the document in Acrobat. The need to download special reader software before accessing a document may also pose a difficult legal issue, when the issuer intends to meet the SEC's actual-delivery requirements by notifying consenting investors of a document's availability on a Website.⁵⁰

50. Whether that impediment to ready access prevents electronic delivery from being equivalent to paper delivery is discussed *infra* in Section 3.07 [b].



[Handwritten signature]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Due Wed. 11/11

Sen. Cat.

1 **AN ACT**; relating to: the appointment of a proxy by a shareholder in a business
2 corporation.

Analysis by the Legislative Reference Bureau

Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.

This bill permits a shareholder to appoint a proxy either in writing or by transmitting an electronic transmission, or authorizing the transmission of an electronic transmission, to the person who will be appointed as proxy. Under the bill, an electronic transmission includes internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 180.0722 (2) of the statutes is repealed and recreated to read:
4 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders,
5 or to express consent or dissent in writing to any corporate action without a meeting
6 of shareholders, may authorize another person to act for the shareholder by
7 appointing the person as proxy.

1 (b) Without limiting the manner in which a shareholder may appoint a proxy
 2 under par. (a), any of the following is a valid means by which a shareholder may
 3 appoint a proxy: *do any of the following*

4 1. ~~A shareholder may appoint~~ *Appoint* a proxy in writing. Such an appointment may
 5 be made by the shareholder or the shareholder's authorized officer, director, employe,
 6 agent or attorney-in-fact signing the writing or causing his or her signature to be
 7 affixed to the writing by any reasonable means, including, but not limited to, by
 8 facsimile signature.

9 2. ~~A shareholder may appoint~~ *Appoint* a proxy by transmitting an electronic
 10 transmission or authorizing the transmission of an electronic transmission to the
 11 person who will be appointed as proxy or to a proxy solicitation firm, proxy support
 12 service organization or like agent ~~and~~ appointed as proxy to receive the
 13 transmission. Every electronic transmission shall contain, or be accompanied by,
 14 information that can be used to reasonably determine that the shareholder
 15 transmitted the electronic transmission or authorized the transmission of the
 16 electronic transmission. Any person charged with determining whether a
 17 shareholder transmitted the electronic transmission or authorized the transmission
 18 of the electronic transmission shall specify the information upon which the
 19 determination is made. *For the purpose of this subdivision, an* "electronic
 20 transmission" includes ~~but is not limited to~~ *Internet* internet transmission, touch-tone
 21 telephonic transmission or the transmission of a telegram or cablegram.

22 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
 23 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
 24 substituted or used in lieu of the original writing or electronic transmission for any
 25 purpose for which the original writing or electronic transmission could be used, but

1 only if the copy, facsimile telecommunication or other reliable reproduction is a
2 complete reproduction of the original writing or electronic transmission.

3 **SECTION 2.** 180.0722 (7) of the statutes is amended to read:

4 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
5 authority appearing ~~on the face of the appointment form~~ in or on the form of
6 appointment, a corporation may accept the proxy's vote or other action as that of the
7 shareholder making the appointment.

8 History: 1989 a. 303; 1997 a. 27.

8 **SECTION 3.** 180.0722 (8) (a) of the statutes is amended to read:

9 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
10 openly stating the revocation at a shareholder meeting or appointing a new proxy in
11 writing the manner provided under sub. (2) (b).

12 History: 1989 a. 303; 1997 a. 27.

12 **SECTION 4.** 180.0724 (1e) of the statutes is created to read:

13 180.0724 (1e) In this section, "signed" means the placing of the shareholder's
14 name or other authorization, by the shareholder or the shareholder's authorized
15 officer, director, employe or agent, in or on the proxy appointment form by manual
16 signature, electronic transmission, internet transmission, touch-tone telephonic
17 transmission or the transmission of a telegram or cablegram.

18 **SECTION 5.** 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

19 (END)

Sort;
out-of-order

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0676/P1dn

RAC: *Kimley*

Speaker Jensen:

This draft is based on the proposed language submitted by Bruce C. Davidson, Anthony H. Driessen and Catherine S. Powell of Quarles & Brady. I have tried to conform the language of the draft as closely as possible to the proposed language. At times, however, I have drafted language that deviates slightly from the proposed language for the purpose of clarity and to conform with the drafting style of ch. 180. In particular, please note the following:

1. In s. 180.0722 (2) (a), I said that the shareholder “may authorize another person to act for the shareholder by appointing the person as proxy”. This seems a clearer and more direct way of saying that a shareholder “may authorize another person or persons to act for the shareholder by appointing such person or persons to act for the shareholder as proxy”. Also, there seems to be no reason to refer to “person or persons” since, under s. 990.001 (1), the singular includes the plural. In this context, there is no use of any limiting phrase, such as “only one person”, that would limit “person” to the singular.

2. In s. 180.0722 (2) (b) 1., a shareholder or the shareholder’s authorized officer, director, employe, agent or attorney-in-fact can appoint a proxy in writing. In s. 180.0722 (2) (b) 2., however, it seems that only a shareholder may appoint a proxy by transmitting an electronic transmission or authorizing an electronic transmission. Do you also want to give this kind of appointment authority to a shareholder’s authorized officer, director, employe, agent and attorney-in-fact?

3. In s. 180.0722 (2) (b) 2., I broke the subdivision down into several sentences for the purpose of clarity. I did not refer to “inspectors” since there is no foundation for the use of that term in ch. 180. I simply referred to the “person charged with determining whether a shareholder transmitted the electronic transmission or authorized the transmission of the electronic transmission”.

4. In s. 180.0724 (1e), I did not define “signature” because that term is not used in s. 180.0724. Instead, I only defined “signed”. Also, do you wish to include in this definition a shareholder’s attorney-in-fact among the list of individuals authorized to sign for the shareholder? The attorney-in-fact is referred to in s. 180.0722 (2) (b) 1.

Please review this preliminary draft to make certain that it fulfills your intent.

Richard A. Champagne
Legislative Attorney
266-9930

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0676/P1dn
RAC:kmg:lp

November 9, 1998

Speaker Jensen:

This draft is based on the proposed language submitted by Bruce C. Davidson, Anthony H. Driessen and Catherine S. Powell of Quarles & Brady. I have tried to conform the language of the draft as closely as possible to the proposed language. At times, however, I have drafted language that deviates slightly from the proposed language for the purpose of clarity and to conform with the drafting style of ch. 180. In particular, please note the following:

1. In s. 180.0722 (2) (a), I said that the shareholder "may authorize another person to act for the shareholder by appointing the person as proxy". This seems a clearer and more direct way of saying that a shareholder "may authorize another person or persons to act for the shareholder by appointing such person or persons to act for the shareholder as proxy". Also, there seems to be no reason to refer to "person or persons" since, under s. 990.001 (1), the singular includes the plural. In this context, there is no use of any limiting phrase, such as "only one person", that would limit "person" to the singular.

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Please review this preliminary draft to make certain that it fulfills your intent.

Richard A. Champagne
Legislative Attorney
266-9930

1 shareholders, may authorize another person to act for the shareholder by appointing
2 the person as proxy.

3 (b) Without limiting the manner in which a shareholder may appoint a proxy
4 under par. (a), a shareholder may do any of the following: by

5 1. Appoint a proxy in writing. ~~Such an appointment may be made by the~~
6 ~~shareholder,~~ or the shareholder's authorized officer, director, employee, agent or
7 attorney-in-fact signing the writing or causing his or her signature to be affixed to
8 the writing by any reasonable means, including, but not limited to, b. facsimile
9 signature.

10 2. Appoint a proxy by transmitting an electronic transmission or authorizing
11 the transmission of an electronic transmission to the person who will be appointed
12 as proxy or to a proxy solicitation firm, proxy support service organization or like
13 agent appointed as proxy to receive the transmission. Every electronic transmission
14 shall contain, or be accompanied by, information that can be used to reasonably
15 determine that the shareholder transmitted the electronic transmission or
16 authorized the transmission of the electronic transmission. Any person charged
17 with determining whether a shareholder transmitted the electronic transmission or
18 authorized the transmission of the electronic transmission shall specify the
19 information upon which the determination is made. In this subdivision, "electronic
20 transmission" includes, but is not limited to, internet transmission, touch-tone
21 telephonic transmission or the transmission of a telegram or cablegram.

22 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
23 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
24 substituted or used in lieu of the original writing or electronic transmission for any
25 purpose for which the original writing or electronic transmission could be used, but

1999 - 2000 Legislature

- 3 -

LRB-0676/P1
RAC:kmg:lp

1 only if the copy, facsimile telecommunication or other reliable reproduction is a
2 complete reproduction of the original writing or electronic transmission.

3 SECTION 2. 180.0722 (7) of the statutes is amended to read:

4 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
5 authority appearing on the face of the appointment form in or on the form of
6 appointment, a corporation may accept the proxy's vote or other action as that of the
7 shareholder making the appointment.

8 SECTION 3. 180.0722 (8) (a) of the statutes is amended to read:

9 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
10 openly stating the revocation at a shareholder meeting or appointing a new proxy in
11 writing the manner provided under sub. (2) (b).

12 SECTION 4. 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

13 SECTION 5. 180.0724 (1e) of the statutes is created to read:

14 180.0724 (1e) In this section, "signed" means the placing of the shareholder's
15 name or other authorization, by the shareholder or the shareholder's authorized
16 officer, director, employee, or agent, ^{or attorney-in-fact} in or on the proxy appointment form by manual
17 signature, ^{or by} ~~electronic transmission~~, internet transmission, touch-tone telephonic
18 transmission, or the transmission of a telegram or cablegram.

(END)

or other form of electronic transmission.

*[↓ in (b) 2 electronic transmission
includes, but is not limited to,
internet, touch tone, telegram or
cablegram]*

Scott R. Jensen
Assembly Speaker

Memo

To: Rick Champagne
From: Chad Taylor
CC: [Click [here](#) and type name]
Date: November 25, 1998
Re: Proxy Draft

Rick:

Here are some edits to the draft you sent over. If you have problems reading them, give me a call.

Thank you,

Chad



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0676/P1

RAC:kmg:lp

*Redraft mater
been run.*

soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *Ken Cat* **to renumber** 180.0724 (1); **to amend** 180.0722 (7) and 180.0722 (8) (a);
 2 **to repeal and recreate** 180.0722 (2); and **to create** 180.0724 (1e) of the
 3 statutes; **relating to:** the appointment of a proxy by a shareholder in a business
 4 corporation.

Analysis by the Legislative Reference Bureau

Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.

This bill permits a shareholder to appoint a proxy either in writing or by transmitting an electronic transmission, or authorizing the transmission of an electronic transmission, to the person who will be appointed as proxy. Under the bill, an electronic transmission includes internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 180.0722 (2) of the statutes is repealed and recreated to read:
 6 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
 7 to express consent or dissent in writing to any corporate action without a meeting of

1 shareholders, may authorize another person to act for the shareholder by appointing
2 the person as proxy.

3 (b) Without limiting the manner in which a shareholder may appoint a proxy
4 under par. (a), a shareholder may do any of the following:

5 1. Appoint a proxy in writing. ~~Such an appointment may be made by the~~
6 ~~shareholder~~ or the shareholder's authorized officer, director, employe, agent or
7 attorney-in-fact signing the writing or causing his or her signature to be affixed to
8 the writing by any reasonable means, including, but not limited to, by facsimile
9 signature.

10 2. Appoint a proxy by transmitting an electronic transmission or authorizing
11 the transmission of an electronic transmission to the person who will be appointed
12 as proxy or to a proxy solicitation firm, proxy support service organization or like
13 agent appointed as proxy to receive the transmission. Every electronic transmission
14 shall contain, or be accompanied by, information that can be used to reasonably
15 determine that the shareholder transmitted the electronic transmission or
16 authorized the transmission of the electronic transmission. Any person charged
17 with determining whether a shareholder transmitted the electronic transmission or
18 authorized the transmission of the electronic transmission shall specify the
19 information upon which the determination is made. In this subdivision, "electronic
20 transmission" includes, but is not limited to, internet transmission, touch-tone
21 telephonic transmission or the transmission of a telegram or cablegram.

22 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
23 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
24 substituted or used in lieu of the original writing or electronic transmission for any
25 purpose for which the original writing or electronic transmission could be used, but

1 only if the copy, facsimile telecommunication or other reliable reproduction is a
2 complete reproduction of the original writing or electronic transmission.

3 **SECTION 2.** 180.0722 (7) of the statutes is amended to read:

4 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
5 authority appearing ~~on the face of the appointment form~~ in or on the form of
6 appointment, a corporation may accept the proxy's vote or other action as that of the
7 shareholder making the appointment.

8 **SECTION 3.** 180.0722 (8) (a) of the statutes is amended to read:

9 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
10 openly stating the revocation at a shareholder meeting or appointing a new proxy in
11 writing the manner provided under sub. (2) (b).

12 **SECTION 4.** 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

13 **SECTION 5.** 180.0724 (1e) of the statutes is created to read:

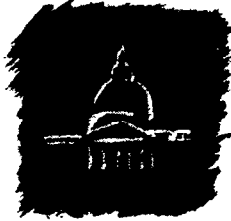
14 180.0724 (1e) In this section, "signed" means the placing of the shareholder's
15 name or other authorization, by the shareholder or the shareholder's authorized
16 officer, director, employee ^{or attorney-in-fact} or agent, in or on the proxy appointment form by manual
17 signature ^{or by} ~~electronic transmission~~ internet transmission, touch-tone telephonic
18 transmission ^{or} the transmission of a telegram or cablegram.

19 (END)

or other form of
electronic
transmission

3





SCOTT R. JENSEN
ASSEMBLY SPEAKER

- IN RESPONSE TO YOUR RECENT REQUEST.
- I THOUGHT YOU MIGHT BE INTERESTED IN THE ENCLOSED MATERIAL.

Rick,

Could you please make
the following amendments
to LRB draft -0676.
Any questions, please
give me a call.

Thank You,
Chad

Section 180.0141

NOTICE

(1) This section applies to notice that is required under this chapter and that is made subject to this section by express reference to this section.

(2) (a) A person shall give notice in writing; except as provided in par. (b).

(b) A person may give oral notice if oral notice is permitted by the articles of incorporation or bylaws and not otherwise prohibited by this chapter.

(3) Except as provided in s. 180.0721 (4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, ~~or~~ by mail or private carrier, or by electronic transmission, and, if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(4) Written notice to a domestic corporation or a foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic corporation or foreign corporation at its principal office. With respect to a foreign corporation that has not yet filed an annual report under s. 180.1622, the address of the foreign corporation's principal office may be determined from its application for a certificate of authority.

(5) (a) Except as provided in par. (b) and ss. 180.0807(2) and 180.0843(1), written notice is effective at that earliest of the following:

1. When received.
2. Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
4. On the effective date specified in the articles of incorporation or bylaws.

(b) Written notice by a domestic corporation or foreign corporation to its shareholder is effective when mailed or when transmitted electronically and may be addressed to the shareholder's address, including the shareholder's electronic mail address when notice is communicated by electronic transmission, shown in the domestic corporation's or foreign corporation's current record of shareholders.

(c) Oral notice is effective when communicated.

MW1-147957-2





State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0676/2 2

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SOM

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has been run

1999 BILL

1 AN ACT *to renumber* 180.0724 (1); *to amend* 180.0722 (7) and 180.0722 (8) (a);
 2 *to repeal and recreate* 180.0722 (2); and *to create* 180.0724 (1e) of the
 3 statutes; **relating to** the appointment of a proxy by a shareholder in a business
 4 corporation.

forms of notice ^{provided} ~~concerned~~ by a business corporation and

Analysis by the Legislative Reference Bureau

2. Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.

This bill permits a shareholder to appoint a proxy either in writing or by transmitting an electronic transmission, or authorizing the transmission of an electronic transmission, to the person who will be appointed as proxy. Under the bill, an electronic transmission includes internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram.

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 6 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
 7 to express consent or dissent in writing to any corporate action without a meeting of

Right Analysis

Insert 1-5

BILL

1 shareholders, may authorize another person to act for the shareholder by appointing
2 the person as proxy.

3 (b) Without limiting the manner in which a shareholder may appoint a proxy
4 under par. (a), a shareholder or the shareholder's authorized officer, director,
5 employe, agent or attorney-in-fact may do any of the following:

6 1. Appoint a proxy in writing by signing the writing or causing his or her
7 signature to be affixed to the writing by any reasonable means, including, but not
8 limited to, by facsimile signature.

9 2. Appoint a proxy by transmitting an electronic transmission or authorizing
10 the transmission of an electronic transmission to the person who will be appointed
11 as proxy or to a proxy solicitation firm, proxy support service organization or like
12 agent appointed as proxy to receive the transmission. Every electronic transmission
13 shall contain, or be accompanied by, information that can be used to reasonably
14 determine that the shareholder transmitted the electronic transmission or
15 authorized the transmission of the electronic transmission. Any person charged
16 with determining whether a shareholder transmitted the electronic transmission or
17 authorized the transmission of the electronic transmission shall specify the
18 information upon which the determination is made. In this subdivision, "electronic
19 transmission" includes, but is not limited to, internet transmission, touch-tone
20 telephonic transmission or the transmission of a telegram or cablegram.

21 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
22 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
23 substituted or used in lieu of the original writing or electronic transmission for any
24 purpose for which the original writing or electronic transmission could be used, but

BILL

1 only if the copy, facsimile telecommunication or other reliable reproduction is a
2 complete reproduction of the original writing or electronic transmission.

3 **SECTION 2.** 180.0722 (7) of the statutes is amended to read:

4 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
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7 shareholder making the appointment.

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15 name or other authorization, by the shareholder or the shareholder's authorized
16 officer, director, employe, agent or attorney-in-fact, in or on the proxy appointment
17 form by manual signature or by internet transmission, touch-tone telephonic
18 transmission, the transmission of a telegram or cablegram or other form of electronic
19 transmission.

20 (END)

Analysis: ✓

This bill does all of the following:

1. Under current law, a business corporation is required to provide some form of notice in many different situations involving corporate actions. With certain exceptions, the notice must be in writing and, unless otherwise provided in the articles of incorporation of the business corporation, may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, or, if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

This bill provides that notice may also be communicated by electronic transmission.

Insert 1-5: ✓

SECTION 1. 180.0141 (3) of the statutes is amended to read:

180.0141 (3) Except as provided in s. 180.0721 (4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, ~~or~~ by mail or private carrier or by electronic transmission, and, if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

History: 1989 a 303.

SECTION 2. 180.0141 (5) (b) of the statutes is amended to read:

180.0141 (5) (b) Written notice by a domestic corporation or foreign corporation to its shareholder is effective when mailed or when transmitted electronically and may be addressed to the shareholder's address, including the shareholder's electronic mail address when notice is communicated by electronic transmission,

shown in the domestic corporation's or foreign corporation's current record of shareholders.

History: 1989 a. 303.



Firstar Plaza
P.O. Box 2113
Madison, Wisconsin 53701
608/251-5000
FAX 608/251-9166

Attorneys at Law in
Milwaukee and Madison, Wisconsin
West Palm Beach, Naples and
Boca Raton, Florida
Phoenix, Arizona

FAX TRANSMITTAL COVER SHEET

DATE: January 13, 1999

TO: NAME: Rick Champagne
FIRM:
CITY, STATE:
FAX NUMBER: 608/264-8522

FROM: Tom Fonfara
SENDER'S PHONE: 608/283-2623

NUMBER OF PAGES: 4
(INCLUDING COVER SHEET)

***** MESSAGE *****

**THE INFORMATION CONTAINED IN THIS MESSAGE IS PERSONAL AND CONFIDENTIAL
FOR THE RECIPIENT(S) NAMED ABOVE.
IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND
RETURN THIS MESSAGE TO US BY MAIL. THANK YOU.**

IN CASE OF ANY TRANSMISSION PROBLEM, CALL (608) 283-2486 OR CALL (608) 283-2456 EXCEPT AFTER 5:30 PM
CENTRAL TIME, CALL (608) 251-5000

Client Matter No:	Job Code:
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SENT BY: Lisa Strand

TIME:



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0676/1
RAC:kmg:lp

1999 BILL

1 **AN ACT** to renumber 180.0724 (1); to amend 180.0722 (7) and 180.0722 (8) (a);
2 to repeal and recreate 180.0722 (2); and to create 180.0724 (1e) of the
3 statutes; relating to: the appointment of a proxy by a shareholder in a business
4 corporation.

Analysis by the Legislative Reference Bureau

Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.

This bill permits a shareholder to appoint a proxy either in writing or by transmitting an electronic transmission, or authorizing the transmission of an electronic transmission, to the person who will be appointed as proxy. Under the bill, an electronic transmission includes internet transmission, touch-tone telephonic transmission or the transmission of a telegram or cablegram.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 180.0722 (2) of the statutes is repealed and recreated to read:
6 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
7 to express consent or dissent in writing to any corporate action without a meeting of

BILL.

1 shareholders, may authorize another person to act for the shareholder by appointing
2 the person as proxy.

3 (b) Without limiting the manner in which a shareholder may appoint a proxy
4 under par. (a), a shareholder or the shareholder's authorized officer, director,
5 employe, agent or attorney-in-fact may do any of the following:

6 1. Appoint a proxy in writing by signing the writing or causing his or her
7 signature to be affixed to the writing by any reasonable means, including, but not
8 limited to, by facsimile signature.

9 2. Appoint a proxy by transmitting ~~an electronic transmission~~ or authorizing
10 the transmission of an electronic transmission to the person who will be appointed
11 as proxy or to a proxy solicitation firm, proxy support service organization or like
12 agent appointed as proxy to receive the transmission. Every electronic transmission
13 shall contain, or be accompanied by, information that can be used to reasonably
14 determine that the shareholder transmitted ~~the electronic transmission~~ or
15 authorized the transmission of the electronic transmission. Any person charged
16 with determining whether a shareholder transmitted ~~the electronic transmission~~ or
17 authorized the transmission of the electronic transmission shall specify the
18 information upon which the determination is made. ~~In this subdivision,~~ ^E "electronic
19 transmission" ^{MEANS} ~~includes, but is not limited to,~~ internet transmission, touch-tone
20 telephonic transmission or the transmission of a telegram or cablegram. ^{AND SIMILAR RELIABLE COMMUNICATIONS.}

21 (c) Any copy, facsimile telecommunication or other reliable reproduction of the ^{INFORMATION}
22 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
23 substituted or used in lieu of the original writing or electronic transmission for any
24 purpose for which the original writing or electronic transmission could be used, but

1999 - 2000 Legislature

- 3 -

LRB-0676/1
RAC:kmg:lp**BILL**

1 only if the copy, facsimile telecommunication or other reliable reproduction is a
 2 complete reproduction of the ^{INFORMATION IN THE} original writing or electronic transmission.

3 **SECTION 2.** 180.0722 (7) of the statutes is amended to read:

4 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
 5 authority appearing ~~on the face of the appointment form in or on the form of~~
 6 appointment, a corporation may accept the proxy's vote or other action as that of the
 7 shareholder making the appointment.

8 **SECTION 3.** 180.0722 (8) (a) of the statutes is amended to read:

9 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
 10 openly stating the revocation at a shareholder meeting or appointing a new proxy in
 11 writing the manner provided under sub. (2) (b).

12 **SECTION 4.** 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

13 **SECTION 5.** 180.0724 (1e) of the statutes is created to read:

14 180.0724 (1e) In this section, "signed" means the placing of the shareholder's
 15 name or other authorization, by the shareholder or the shareholder's authorized
 16 officer, director, employe, agent or attorney-in-fact, in or on the proxy appointment
 17 form by manual signature or by ~~internet transmission, touch tone telephonic~~
 18 ~~transmission, the transmission of a telegram or cablegram or other form of~~ electronic
 19 transmission. AS AUTHORIZED IN SEC 180.0722 (2).

20 (END)



ID-Note
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0676/2
RAC:kmg:km

soon

*Redraft make
has been run*

1999 BILL

1 *Gen. Cat.*
 2 AN ACT *to* **renumber** 180.0724 (1); **to amend** 180.0141 (3), 180.0141 (5) (b),
 3 180.0722 (7) and 180.0722 (8) (a); **to repeal and recreate** 180.0722 (2); and **to**
 4 **create** 180.0724 (1e) of the statutes; **relating to:** forms of notice provided by
 5 a business corporation and the appointment of a proxy by a shareholder in a
 business corporation.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Under current law, a business corporation is required to provide some form of notice in many different situations involving corporate actions. With certain exceptions, the notice must be in writing and, unless otherwise provided in the articles of incorporation of the business corporation, may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, or, if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

This bill provides that notice may also be communicated by electronic transmission.

2. Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.

BILL

This bill permits a shareholder to appoint a proxy either in writing or by transmitting ~~an electronic transmission~~, or authorizing the transmission of an electronic transmission, to the person who will be appointed as proxy. Under the bill, ~~the~~ "electronic transmission" ~~includes~~ internet transmission, touch-tone telephonic transmission ~~or~~ the transmission of a telegram or cablegram.

memo
or any similar form of reliable communication

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 180.0141 (3) of the statutes is amended to read:

Insert 2-1

2 180.0141 (3) Except as provided in s. 180.0721 (4) or unless otherwise provided
3 in the articles of incorporation or bylaws, notice may be communicated in person, by
4 telephone, telegraph, teletype, facsimile or other form of wire or wireless
5 communication, ~~or~~ by mail or private carrier or by electronic transmission, and, if
6 these forms of personal notice are impracticable, notice may be communicated by a
7 newspaper of general circulation in the area where published, or by radio, television
8 or other form of public broadcast communication.

9 **SECTION 2.** 180.0141 (5) (b) of the statutes is amended to read:

10 180.0141 (5) (b) Written notice by a domestic corporation or foreign corporation
11 to its shareholder is effective when mailed or when transmitted electronically and
12 may be addressed to the shareholder's address, including the shareholder's
13 electronic mail address when notice is communicated by electronic transmission,
14 shown in the domestic corporation's or foreign corporation's current record of
15 shareholders.

16 **SECTION 3.** 180.0722 (2) of the statutes is repealed and recreated to read:

17 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
18 to express consent or dissent in writing to any corporate action without a meeting of

BILL

1 shareholders, may authorize another person to act for the shareholder by appointing
2 the person as proxy.

3 (b) Without limiting the manner in which a shareholder may appoint a proxy
4 under par. (a), a shareholder or the shareholder's authorized officer, director,
5 employe, agent or attorney-in-fact may do any of the following:

6 1. Appoint a proxy in writing by signing the writing or causing his or her
7 signature to be affixed to the writing by any reasonable means, including, but not
8 limited to, by facsimile signature.

9 2. Appoint a proxy by transmitting ~~an electronic transmission~~ or authorizing
10 the transmission of an electronic transmission to the person who will be appointed
11 as proxy or to a proxy solicitation firm, proxy support service organization or like
12 agent appointed as proxy to receive the transmission. Every electronic transmission
13 shall contain, or be accompanied by, information that can be used to reasonably
14 determine that the shareholder transmitted ~~the electronic transmission~~ or
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16 with determining whether a shareholder transmitted ~~the electronic transmission~~ or
17 authorized the transmission of the electronic transmission shall specify the
18 information upon which the determination is made. In this subdivision, "electronic

19 transmission" includes, but is not limited to, internet transmission, touch-tone
20 telephonic transmission or the transmission of a telegram or cablegram.

21 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
22 writing under par. (b) 1. or the electronic transmission under par. (b) 2. may be
23 substituted or used in lieu of the original writing or electronic transmission for any
24 purpose for which the original writing or electronic transmission could be used, but

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only if the copy, facsimile telecommunication or other reliable reproduction is a complete reproduction of the original writing or electronic transmission.

SECTION 4. 180.0722 (7) of the statutes is amended to read:

180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's authority appearing ~~on the face of the appointment form~~ in or on the form of appointment, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

SECTION 5. 180.0722 (8) (a) of the statutes is amended to read:

180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in writing the manner provided under sub. (2) (b).

SECTION 6. 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

SECTION 7. 180.0724 (1e) of the statutes is created to read:

180.0724 (1e) In this section, "signed" means the placing of the shareholder's name or other authorization, by the shareholder or the shareholder's authorized officer, director, employe, agent or attorney-in-fact, in or on the proxy appointment form by manual signature or by ~~internet transmission, touch-tone telephonic transmission, the transmission of a telegram or cablegram or other form of~~ electronic transmission.

(END)

in the mannerⁿⁿ provided under s. 180.0722(2)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0676/3ins
RAC::

Insert 2-1: ✓

SECTION 1. 180.0103 (7m) of the statutes is created to read:

180.0103 (7m) "Electronic transmission" means internet transmission, touch-tone telephonic transmission, transmission of a telegram or cablegram or any other similar form of reliable communication.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0676/3dn

RAC::

King

Because the definition of "electronic transmission" will apply outside of s. 180.0722 (2), I created the definition of "electronic transmission" not in s. 180.0722 (2) (b) 2. but at the outset of ch. 180. Also, I changed the proposed language from "similar reliable communication" to "any other similar form of reliable communication". I believe that this is a clearer expression of the same concept. Is this OK?

Richard A. Champagne
Legislative Attorney
266-9930

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0676/3dn
RAC:kmg:ijs

January 15, 1999

Because the definition of "electronic transmission" will apply outside of s. 180.0722 (2), I created the definition of "electronic transmission" not in s. 180.0722 (2) (b) 2. but at the outset of ch. 180. Also, I changed the proposed language from "similar reliable communication" to "any other similar form of reliable communication". I believe that this is a clearer expression of the same concept. Is this OK?

Richard A. Champagne
Legislative Attorney
266-9930



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0676/2-4
RAC:kmg:ijs

Tuesday 1/19/99

Redraft order
has been run

1999 BILL

Ken Cat.

1 AN ACT to renumber 180.0724 (1); to amend 180.0141 (3), 180.0141 (5) (b),
 2 180.0722 (7) and 180.0722 (8) (a); to repeal and recreate 180.0722 (2); and to
 3 create 180.0103 (7m) and 180.0724 (1e) of the statutes; relating to: forms of
 4 notice provided by a business corporation and the appointment of a proxy by a
 5 shareholder in a business corporation.

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1. Under current law, a business corporation is required to provide some form of notice in many different situations involving corporate actions. With certain exceptions, the notice must be in writing and, unless otherwise provided in the articles of incorporation of the business corporation, may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, or, if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

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BILL

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1 **SECTION 1.** 180.0103 (7m) of the statutes is created to read:

2 180.0103 (7m) "Electronic transmission" means internet transmission,
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4 other similar form of reliable communication.

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19 shareholders.

BILL

1 **SECTION 4.** 180.0722 (2) of the statutes is repealed and recreated to read:

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3 to express consent or dissent in writing to any corporate action without a meeting of
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5 the person as proxy.

6 (b) Without limiting the manner in which a shareholder may appoint a proxy
7 under par. (a), a shareholder or the shareholder's authorized officer, director,
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11 limited to, by facsimile signature.

12 2. Appoint a proxy by transmitting or authorizing the transmission of an
13 electronic transmission to the person who will be appointed as proxy or to a proxy
14 solicitation firm, proxy support service organization or like agent appointed as proxy
15 to receive the transmission. Every electronic transmission shall contain, or be
16 accompanied by, information that can be used to reasonably determine that the
17 shareholder transmitted or authorized the transmission of the electronic
18 transmission. Any person charged with determining whether a shareholder
19 transmitted or authorized the transmission of the electronic transmission shall
20 specify the information upon which the determination is made.

21 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
22 information in the writing under par. (b) 1. or the electronic transmission under par.
23 (b) 2. may be substituted or used in lieu of the original writing or electronic
24 transmission for any purpose for which the original writing or electronic
25 transmission could be used, but only if the copy, facsimile telecommunication or other

BILL

1 reliable reproduction is a complete reproduction of the information in the original
2 writing or electronic transmission.

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8 **SECTION 6.** 180.0722 (8) (a) of the statutes is amended to read:

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10 openly stating the revocation at a shareholder meeting or appointing a new proxy in
11 writing the manner provided under sub. (2) (b).

12 **SECTION 7.** 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

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15 name or other authorization, by the shareholder or the shareholder's authorized
16 officer, director, employe, agent or attorney-in-fact, in or on the proxy appointment
17 form by manual signature or by electronic transmission in the manner provided
18 under s. 180.0722 (2).

19 (END)