



A Frank Discussion on Notice & Access

The SEC adopted “e-proxy” rule amendments, cumulatively referred to as the Notice and Access model, in January, 2007. A stated purpose of the new model is, “to provide shareholders with the ability to choose the means by which they access proxy materials.” For corporate issuers, the Notice and Access model provides opportunities to save money on printing and postage costs -- by switching from hardcopy to electronic versions of shareholder meeting materials. Also, by encouraging greater use of the Internet, the model changes the mode of communications with investors.

Broadridge has been working closely with financial intermediaries and issuers to implement the new model and provide it as an option for all who choose it. Within the first six months of “voluntary” rules going into effect (July, 2007), sixty-nine corporate issuers chose Notice and Access for their shareholder meetings. These “early adopters” ranged in size from under 1,000 to over 2,000,000 street shareholders. As a group, they represent less than 10% of all issuers whose meetings took place during this period. Many companies took a “wait and see” approach -- in order to understand the impact of the new rules on meeting outcomes, costs, preparation time, and shareholder relations.

The experiences of early adopters provide valuable insights into whether Notice and Access is accomplishing its intended purposes, the factors issuers consider in evaluating its use, and some of the operational details encountered along the way.

Under rules for the new “universal” model, large accelerated filers are required (as of January 1, 2008) to post their proxy materials on a publicly-accessible website. Many are evaluating whether to go the “Notice-only” route, distribute full sets of proxy materials, or employ a combination of both methods with a “slice and dice” approach. Based on the experiences of early adopters, choosing the new option requires moving up by seven to ten days, or more, the

date by which companies would otherwise file proxy statements with the SEC.

Broadridge recently interviewed three firms who are willing to share their experiences. These interviews were conducted with executives who are closest to the nitty-gritty details of evaluating Notice and Access and who were responsible for making it work in their firms. The interviews include: Helen N. Kaminski (Assistant General Counsel) and John-Paul Schuirink (Director of Investor Relations), at Sara Lee Corporation; Gale Smith (Director of Corporate Development), at Pharmos Corp.; and Dennie Kimbrough (Investor Relations) and John Seethoff (Deputy General Counsel and Assistant Corporate Secretary), at Microsoft.

Broadridge: [What were the key factors in your decision to utilize Notice and Access for your recent shareholder meeting?](#)

John-Paul Schuirink, Sara Lee: “The potential cost savings was the key factor. We knew Notice and Access was coming in July, 2007 – three months before our mailing date – so we decided to explore early adoption since our meeting was in October. We sensed our shareholders would not be averse to Notice and Access since the company had been encouraging them for some time to use electronic delivery. Also, the sustainability issues, such as reducing paper and saving trees, made it more compelling. Lastly, we saw Notice and Access as a method for faster delivery of proxy materials to our shareholders.”

Gale Smith, Pharmos: “That’s easy... our decision was based 100% on the cost savings. Personally, I was also interested in helping the environment, knowing more often than not that annual reports are not widely read by individual shareholders and are tossed into the garbage. In my case, the decision was 85% based on cost savings and 15% on environmental conservation.”

Dennie Kimbrough, Microsoft: “There were a couple of things. First, the cost savings and second, as a technology company, we wanted to be able to drive

people to the Internet and use technology in this process.”

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

Broadridge: [What reservations did you have about using Notice and Access?](#)

Gale Smith, Pharmos: “The biggest issue was whether our corporate legal counsel could get the proxy finalized and filed within the earlier deadline – it’s been very tough in the past getting them to finalize and file the proxy with enough time to avoid rush fees at the printer, so I knew ahead of time what I would be up against. Not wanting to lose the chance to go with Notice and Access this year, I kept a high level of communication with them on getting the proxy materials filed on time. And I have to say that my Broadridge guy also stayed on top of me. It really worked to keep the pressure on to get the document completed.”

John Seethoff, Microsoft: “Timing was certainly a factor. We realized that we had to be more deliberate in getting certain things done by a certain date. For example, where it could be a challenge is if you sought a “no action” letter on a shareholder proposal from the SEC. Responding to an issue like that with an expedited timeline could create a real problem. We did not have that situation this year and so that factor was off our list, but things that are out of the company’s control could be problematic.”

Helen Kaminski, Sara Lee: “We looked at our shareholder base prior to implementing Notice and Access, and although it was heavily weighted toward institutional stockholders, we also have a lot of older retail holders who have been stockholders for a long time - our company has been a public company since

1946. There was a concern on the part of management that these holders may have difficulty with the Notice and Access model since they may not be as Internet savvy as our institutional holders. As far as any negative factors that impacted our decision on whether to move ahead with Notice and Access, our two biggest concerns were having all the materials ready 40 days in advance of the meeting, which cut off almost a week in our preparation time, and the potential impact on voting as a result of lower turnout on the retail side. However, since the New York Stock Exchange did not change the broker non-vote rule, we thought 2007 would be the ideal time to test out Notice and Access to see what kind of vote response we’d get before the new NYSE rule goes into effect.”

Broadridge: [What challenges were encountered in complying with the requirements of Notice and Access? How did you address them?](#)

Helen Kaminski, Sara Lee: “The most significant challenge we knew we had to face was not so much complying with the requirements but dealing with some of our elderly retail stockholder base. We modified our shareholder services procedures a bit by providing training to different groups that might get phone calls from shareholders. We wanted to make sure that we could effectively respond to anyone who called with a complaint, such as not having a computer or not being able to request a paper copy because they had a rotary phone.

“So we made sure that our transfer agent, investor relations, communications, and legal personnel, as well as anyone else who might get a call, could answer questions and request mailed copies of materials on the investor’s behalf, to facilitate getting paper copies, and to make sure their desire to opt out of Notice and Access would be effective in the future. That was probably the biggest challenge that we had to face. We put in a lot of effort, but unfortunately some shareholders still were not fully satisfied.”

Gale Smith, Pharmos: “I don’t think there were any significant challenges with Notice and Access. There were a few little bumps like the Notice itself. I mentioned this at a seminar I attended after we did Notice and Access, and said that if I got something like this in the mail, not knowing anything in advance about it, I wouldn’t pay any attention to it, it was so plain. The font was too small, and it did nothing to promote

what Notice and Access was all about. The Notice could have been much better laid out and made more attractive with better design. It should have been more of an advertisement for the new Notice model.”

Dennie Kimbrough, Microsoft: “I was going to mention that the Notice itself was a challenging issue because of the communications involved with Notice and Access.”

John Seethoff, Microsoft: “The piece of paper people get is confusing, especially since most retail holders are unfamiliar with Notice and Access. They are expecting hard copies of annual reports and proxies, and all they get is a one page Notice. They may not understand what it is or be confused about the new process even if they do understand what it is. We tried to mitigate this, consistent with the requirements of the rules – but there are practical limits to the Notice design and the amount of information it can include.”

Helen Kaminski, Sara Lee: “The initial Notice form was difficult to understand. The hard part was that the form of Notice Broadridge used was not very user friendly. To be successful, the instructions on the Notice have to be really clear, with bigger print and easy to understand language, so that when shareholders get it, they know what to do with it. We received some complaints and requests from shareholders asking for help, although we received fewer calls than we expected. We expect that this issue will taper off next year, because anyone who called or complained will automatically receive paper next year and in the future.”

John Seethoff, Microsoft: “We are hoping that this proxy season will generate some positive changes in the Notice, but getting there may require some sort of action by the SEC that gives issuers more flexibility with the Notice.”

John-Paul Schuirink, Sara Lee: “Back to what Helen said before, on making the Notice clearer with bigger type, some shareholders thought that the Notice was the actual ballot and marked a yes or no on it. There’s a learning curve here for all parties.”

Helen Kaminski, Sara Lee: “Broadridge, to their credit, reached out to us after our meeting and asked for comments on the Notice format, and seems to be very

receptive to hearing recommendations for future changes or improvements.”

Broadridge: Did you provide any advance communication with shareholders of your intention to use Notice and Access? What input did you have into the design and content of the Notice itself?

Dennie Kimbrough, Microsoft: “We did post information on Notice and Access on the investor relations section of our web site. We were also able to get the Notice augmented to indicate this was a new process this year, and clarify that investors can still get an annual report by mail.”

John-Paul Schuirink, Sara Lee: “We set-up a separate Notice and Access link to the annual meeting webpage on saralee.com with links to our Notice and Access page on Broadridge’s Investor eConnect site. We thought that this would be more helpful since shareholders would intuitively go to saralee.com and we wanted to use the www.saralee.com/annualmeeting URL on the notice to our shareholders. We think this helped us drive more people to the site. The page also included directions to the annual meeting, digital versions of the proxy materials, a letter to shareholders from the chairman, and instructions on how to order hard copies of proxy materials. The one complaint we did have was that information on the location of the annual meeting was not on our Investor eConnect page. For next year, we can probably tailor this page with more custom information.”

Broadridge: To what extent was the nature of the annual meeting agenda a factor in deciding whether to adopt Notice and Access?

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

Helen Kaminski, Sara Lee: “As far as our meeting, it was not routine since we had several stockholder proposals on the ballot.”

Gale Smith, Phamos: “We had only two proposals put up for vote – the re-election of directors, which was

routine, and an increase in the stock option plan, which was not. Since the first proposal was routine, we figured we could rely on it to obtain our quorum by virtue of the discretionary broker vote being returned favorably on it. Although the second proposal was non-routine, we felt confident we would get enough favorable votes in to have it pass, primarily through insider holdings, which is what ultimately did happen. If we had been concerned about obtaining a quorum and/or getting enough votes in on the second proposal, we may have not opted for going with Notice and Access.”

Broadridge: What’s the make-up of your shareholder base?

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

Dennie Kimbrough, Microsoft: “We have approximately 29% retail shares, a large officers and directors segment of 13-14% of the shares, and the remainder of the shares held by institutional investors. Most of our retail shareholder ownership is in street name.”

John Seethoff, Microsoft: “Although championing technology and the anticipated cost savings were important, because of our significant number of retail shareholders our CFO and General Counsel were concerned about participation levels in that group.”

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

Broadridge: Which Notice and Access model did you adopt and why?

Gale Smith, Pharmos: “We did Notice-only, and the cost savings was the driver. We only did one Notice mailing since the voting was trending the right way, and we decided that we did not need a second mailing, which we had been considering.”

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

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

John Seethoff, Microsoft: “But the second mailing didn’t really trigger much of an additional uptake on requests for full packages. In all, we had less than 20,000 requests for full packages.”

Helen Kaminski, Sara Lee: “We did a hybrid mailing based on our breakeven analysis -- which found that three of our shareholder segments have unique needs. First, for employee shareholders who routinely use the computer for their jobs, we used an electronic consent model and sent them an email with a link to the documents. For international shareholders (which we define as stockholders outside the U.S. and Canada) we sent a full set of paper documents. For the remaining shareholders, who represent the vast majority of our stockholders, we did a Notice-only mailing.”

Broadridge: What savings were realized on printing and postage costs as a result of using Notice and Access? What other benefits, if any, did you realize?

Gale Smith, Pharmos: “As far as printing costs, in 2006 we did not have the proxy ready until the last minute, so there were rush fees on top of the normal printing costs. The total in 2006 was \$108,000 to print the proxy and the 10K Wrap. For the 2007 annual meeting, the printing cost was \$25,300. As to the Broadridge part of it – meaning the postage pass-

through and additional Notice fees - I saved a lot of money on postage, which was partially offset by the additional fees to utilize the new Notice and Access services – those fees were not part of the cost last year. My postage and fees for 2007 were \$36,000. In 2006, they were \$86,000. All in all, my combined savings exceeded \$130,000. Even if you remove the rush fees in 2006 from the equation, the savings would still be over \$100,000.”

John Seethoff, Microsoft: “The all-in savings came in between 10-15% of what we spent last year. Most of this came from printing. If we had sent only one Notice, without the second mailing, we might have realized another 10% in savings. Most of that savings would have been in postage. This was in line with what we expected. One thing to add is we took a very conservative view of the number of copies we should print in anticipation of an unknown number of requests for hard copies. Next year, we expect to realize more significant cost savings by reducing the number of copies that are printed. Last year we sent out over 2 million packages, and for this year, the number requested was less than 20,000.

John-Paul Schuirink, Sara Lee: “The most significant cost savings bucket was in the printing. Compared to last year’s run, we saved 50% on printing and on paper, and 11% on postage and Broadridge costs. Savings on postage, etc. were offset somewhat by the additional Notice and Access fee. But to their credit, Broadridge forewarned us about these fees. We ended up printing 70% less than we did last year and mailed about 10% of what we did last year. We printed 75,000 books this year, compared with 280,000 last year. We mailed out 14,000 packages to our international shareholders and then got requests for roughly 3,000 paper copies -- so we actually mailed less than 20,000 altogether. In total, implementing Notice and Access resulted in savings of \$268,000 for Sara Lee this year.”

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

Broadridge: Was there a change in shareholder voting in comparison to last year? Was there an impact on quorum? Was there an impact on institutional or retail voting?

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

Helen Kaminski, Sara Lee: “Overall, we experienced a small decline in quorum from 86.8% to 82%. There was also a small decline in institutional votes, but the 4% or so overall decline in total shares voted came mostly from the retail base.”

Gale Smith, Pharmos: “In terms of percentage of shareholders voting, the total vote was about the same as in 2006. We don’t get a big return generally from shareholder voting without the discretionary broker vote. In 2007, 74% of shares were voted and in 2006, 79% of the shares were voted. One thing that caught us totally by surprise was that the discretionary broker vote on the re-election of directors came in late - the majority of it did not come in until two days before the meeting, although a small portion of it had come in either 10 or 15 days ahead of the meeting date. This was not necessarily a challenge but more of a learning curve on my part, trying to digest what was going on with the broker vote. It is apparently an emerging trend, referred to as proportional voting. It has not been very well communicated by the broker community or the NYSE, which apparently is behind it. Now that we’re aware of it, it does represent a concern in terms of obtaining a quorum; however it is independent of whether we go with Notice and Access or not”

(Broadridge Note to Readers: Broker-dealers that use proportional voting issue a vote report either ten or fifteen days before the shareholder meeting date, depending upon the date of original distribution of proxy materials. This initial vote report indicates the broker-dealer’s *total position*, but votes only those shares for which specific instructions have been received. Two days prior to the company’s meeting, broker-dealers issue a vote report that proportionally

votes the uninstructed shares of the total position. The uninstructed position is voted in the same “proportion” (For/Against) as instructions received. In order to reflect “retail voter” sentiment, brokers may exclude the votes of “professional investors” when applying the proportional vote to un-instructed shares. In all cases, instructions received are voted as cast. Under NYSE Rule 452, broker votes on routine proposals are voted at the broker’s discretion.)

Broadridge: In what ways, if any, could Notice and Access be improved – operational implementation? Regulatory design?

John-Paul Schuirink, Sara Lee: “Provide more information in advance to shareholders and better design the Notice. The Notice card needs bigger type and it should be explicit that this is not a ballot.”

Helen Kaminski, Sara Lee: “For those issuers whose retail bases are important to their company, like ours, it is important to think through how to keep retail shareholders engaged. This year, we intend to publicize the Notice and Access option more – possibly by including information in the dividend check mailing, making the Notice form more understandable, etc. It would be helpful if the SEC permitted us to include a separate instructional communication with the initial mailing”

Gale Smith, Pharmos: “We were interested in sending our annual letter to shareholders, which was part of the 10K Wrap, with the Notice, but the SEC’s rules don’t allow you to send anything with the Notice, except the proxy materials. We spent a lot of time putting this letter together and there were a lot of important points that we wanted to communicate to our shareholders. We were not sure how likely it would be for shareholders to go to the web site to read this letter, so we wanted to print the letter and send it with the

Notice. We could have sent out the letter separately but we would then be paying double the postage. That was a shame.”

Gale Smith, Pharmos: “It would have been very helpful if we could have access to the page on the Broadridge site containing our materials, with some password protection, in order to see how many hits the site got in terms of shareholders actually looking at the documents. That would be helpful, if it can be done. Other than that, going back to the Notice, I think the design can be greatly improved.”

Dennie Kimbrough, Microsoft: “One of the things that might be done is to educate the broker community more on Notice and Access. I received quite a few calls from brokers and had to educate them. Brokers would get calls from their clients telling them they did not get their annual reports. I would then explain to the brokers that their clients only had to call the phone number on the Notice to get the hard copies. Further educating brokers might help.”

John Seethoff, Microsoft: “At a concept level, people will continue to see if some of the timelines can be shortened or look for ways to better accommodate the company’s needs in putting materials and filings together, and getting them into the process. One idea would be to go from 40 to 35 days. We would hope there will be more clarity in terms of a company’s ability to more effectively communicate to shareholders what Notice and Access is and how to make it work better. This is an issue that we have spoken with Broadridge about and should be taken up by the SEC. The SEC rule really limits what one can do with the content of the Notice. If it’s not feasible to revise the rule at this point, perhaps companies could take a less formal approach -- something akin to a “no action” letter -- which would allow for more flexibility in lieu of changing the rule.

Those who are interested in obtaining more information on Notice and Access, or in evaluating whether it is right for them, will find details and tools on our website under the Investor Communication Solutions menu (refer to the tab, “Corporations”), and, of course, may ask their Broadridge account representative.

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