

# E-proxies land with e-thud: Voting plunges

By Neil Roland

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The Securities and Exchange Commission announced with some fanfare last year its voluntary plan to expand companies' and investors' use of the Internet to display proxy materials and vote on directors and other corporate issues.

In a speech after the so-called e-proxy rule was approved, SEC Commissioner Paul Atkins said it would advance shareholder democracy by reducing mailing and printing costs for investor groups that couldn't otherwise afford solicitations.

The commission estimated that the rule would save companies as much as \$241 million a year by using the Internet more and paper less. Even environmental groups weighed in, predicting the regulation could save 800,000 trees from being cut down each year.

Now that the first proxy season under the rule is over, the prognosis isn't nearly as rosy, including the outlook for the trees. Instead of more shareholder democracy, there may be less, as voting by individual shareholders dropped at companies using the new rule, recent data show. And the limited company participation in the new program identified by a study by the law firm White & Case indicates the anticipated savings may not materialize anytime soon.

“Voter participation dropped like a stone, suggesting fewer people may be paying attention and our markets aren't working as well as they should,” Georgetown University finance professor James Angel said in an interview. “The law of unintended consequences may be at work here.”

Under the rules that went into effect last July, companies have the option of notifying investors by mail that proxy materials are available online. Investors are to be told that they can request a bulk mailing.

The so-called "notice and access" program is part of a broader effort by SEC chairman Christopher Cox to get companies to expand their use of the Internet to provide information to investors.

Earlier this month, for example, the agency issued a proposed rule that would require companies to tag data on financial reports using XBRL to make it easier for investors to compare the information with that of other companies. The SEC also created a legal exemption last year to encourage companies to set up electronic shareholder forums to increase communications between management and investors.

Of the 78 Fortune 100 companies whose proxies were examined by New York-based White & Case, only 19 chose to send investors a postcard with notice of Web availability of proxy materials rather than mailing the materials.

"A significant majority of the companies decided to wait and see how the rule was implemented," Colin Diamond, the White & Case partner who conducted the firm's study, said in an interview. The May 15 study included proxy solicitations between Jan. 1 and May 8.

At companies that gave investors notice of Web-based materials, a far smaller percentage of individual investors voted this year than last, according to Broadridge Financial Solutions. Only 16% of individual investors voted this year after receiving a postcard that referred them to the Internet for materials and instructions on how to vote by e-mail or phone. That compares with 34% who voted last year after receiving a bulk mailing that included a paper ballot, Broadridge's April 30 data show.

"If you're a shareholder and you get a big package in the mail, it gets your attention and the ballot is right there," Mr. Angel said. "If you get just a postcard, it's easy for it to get lost and it requires more active work to go to the Web and figure out how to vote."

Among the companies that used the "notice and access" program

were Chevron, Halliburton, Hewlett-Packard, Honeywell International, Intel and Wells Fargo, according to White & Case.

Many companies targeted the postcards at institutional shareholders who were likely to use the Internet and to individuals with fewer than 1,000 shares who executives figured weren't going to vote anyway, said Geoff Loftus, a spokesman for the Society of Corporate Secretaries and Governance Professionals, which represents mostly company lawyers. That approach would maximize company savings, he said.

At the same time, these companies sent bulk mailings to individuals who owned more than 1,000 shares, on the premise that they were more likely to vote if they got proxy materials in the mail, Mr. Loftus said.

"We have been concerned from the beginning that the SEC rule would disenfranchise voters, and the new data seems to confirm our fears," said Heather Slavkin, a lawyer with the AFL-CIO's investment office.

The SEC staff has been tasked with monitoring the effectiveness of the new rule.

"We are aware of the drop in the average percentage of retail shares voted at companies relying on the 'notice only' option," SEC lawyer Elizabeth Murphy said in an e-mailed statement. "We will certainly focus on this issue."