

## Results of July 13, 2010 Open Forum Meeting

### [Requirements of shareholder meetings](#) [Consensus on standards to be judged by investors](#) [Plans for continuing Forum projects](#)

At Tuesday's open meeting of the Shareholder Forum, participants were able to resolve key issues relating to the requirements of shareholder meetings and, in the time remaining, establish consensus on a few of the proposed standards for fair conduct. The meeting was adjourned with the understanding that the Forum would continue to consider other proposed standards in subsequent communications.

It should be noted that the meeting was limited to 30 in-person participants and included a somewhat larger number of webcast participants, with places allocated according to usual Forum practice to assure representation of relevant corporate, investor and professional perspectives in an effective resolution of marketplace interests. In this first Forum test of webcast participation,<sup>1</sup> arrangements were made to use the audio processes that have become conventional for quarterly analyst webcasts.<sup>2</sup> To adapt this to the open discussion protocols required for both Forum meetings and shareholder meetings, provisions were added for presenting comments and approving proposals. Webcast observers were therefore able to participate in the discussions and decisions.

The results of the meeting are summarized below, and its archived webcast is available for reference:

### [July 12, 2010 webcast: Open Meeting of the Shareholder Forum](#)

#### **Requirements of shareholder meetings**

The meeting started with discussions that became focused on perceived distinctions between "virtual" and in-person shareholder meetings, and on associated administrative considerations relating to voting procedures or "proxy plumbing" issues. Participants concerned primarily with communication objectives raised questions that shifted the focus of discussion to what can and should be done with electronic tools to improve access, timing, and other elements of investor communications, regardless of a meeting's label as "virtual" or "real." Considering the advice of participants with relevant expertise, the following conclusions were established as a foundation for addressing the requirements of shareholder meetings:

- A. Distinction between legal requirements and marketplace discipline – The legal requirements for conducting a shareholder meeting are essentially limited to providing an opportunity for the owners of shares or their proxy delegates to vote on matters that have been properly presented, whether they participate in person or by

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<sup>1</sup> The live webcast and related communications services, as well as the archived record, were provided to the Forum by the webcast's producer, [Thomson Reuters](#).

<sup>2</sup> See: [June 4, 2010 E-Meetings Review, Focus Report: "What We Can Learn from Real Marketplace-Tested Practices."](#)

electronic means.<sup>3</sup> It was noted, for example, that a meeting called in a parking lot, with the parking lot attendant authorized by the board to conduct the required formalities, could satisfy all the formal requirements. Other elements of a shareholder meeting, such as the conventional post-business question-and-answer session, are required only to satisfy marketplace expectations. Commenting after the meeting on these expectations of investors who make voting or investment decisions, a representative of corporate director perspectives observed that “the marketplace is more affective than the courts in enforcing standards of ‘good governance.’”

***In this context, Forum participants can and should focus on standards of conduct to be judged by the investor marketplace, and on which corporate competition for capital will be based.***

- B. Satisfying the procedural requirements of voting at a meeting – Although the various processes for providing voting instructions and being present for actual voting at a meeting stirred the interest of Forum participants concerned with the “proxy plumbing” issues that are now being considered by the SEC,<sup>4</sup> it was finally concluded that a company relying upon competent legal advice could arrange properly administered voting in conjunction with any level of electronic communication. Using the “parking lot meeting” described above as an example, it would be simple for any company to conduct the minimum formalities of a traditional “real” meeting and then add whatever electronic communications are considered appropriate for the purpose of addressing investor interests.

***Companies can address their interests in investor communications without being constrained by “proxy plumbing” requirements.***

- C. Deconstructing the shareholder meeting process – A representative of investor perspectives asked whether there is any reason why a company cannot conduct a meeting for information purposes a few weeks in advance of the formal shareholder meeting “so that the company and shareholders could make their cases regarding ballot items before the votes are cast.” [See the appended July 29, 2010 [note](#).] The clear answer was that there is no reason at all why a company cannot do that, and it is in fact standard practice for companies to conduct a variety of meetings and other communications in advance of the formal shareholder meeting when the voting issues are considered important. Forum participants with experience in proxy solicitation regulations concurred that possible filing requirements would not be burdensome.

***Companies are in fact free to conduct whatever communications they consider justified to respond to investor interests in voting issues, at any time,***

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<sup>3</sup> For a list of specific legal requirements and an explanation of state law reliance on “private ordering” to determine the manner in which a shareholder meeting is conducted, see: [Frank G. Zarb, Jr., Forum project workshop leader: Distinguishing between legal and marketplace requirements.](#)

<sup>4</sup> See: [July 14, 2010 U.S. Securities and Exchange Commission: “SEC Votes to Seek Public Comment on U.S. Proxy System.”](#)

*subject only to the regulations that are routinely observed in all corporate communications with investors.*

### **Consensus on standards to be judged by investors**

With less than twenty minutes remaining to conclude the scheduled two hour meeting, participants agreed to the chair's proposal that the agenda for discussion be suspended so that at least a few of the proposed standards could be considered prior to adjournment, with the understanding that the Forum would continue to address any remaining proposals in post-meeting communications.

The following two standards, presented as questions to be considered by an investor, had been proposed for consideration prior to the meeting<sup>5</sup> and after discussion were supported unanimously by the meeting's in-person and webcast<sup>6</sup> participants:

*1. Does every shareholder have equal access to information relevant to the election of directors and other matters to be decided at the meeting?*

*2. Does the company provide shareholders with reasonable opportunities to present questions to management relating to matters that will be decided at the meeting?*

(Note: The originally proposed Standard #2 was modified during discussion to clarify its meaning by adding the words "to management.")

A third standard, which had not been previously proposed, was developed during the discussion to address issues raised by participants, and was also supported unanimously:

*3. Does the company follow a reasonable procedure for reporting investor questions and comments?*

Consideration of the remaining four standards<sup>7</sup> that had been proposed was deferred, according to the previously stated understanding that those and any other proposed standards would be addressed by Forum participants in subsequent communications.

### **Plans for continuing Forum projects**

In post-meeting discussions, several Forum participants have encouraged the development of separate projects to allow more focused attention to their specific interests.

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<sup>5</sup> See proposed standards 1 and 2: [July 8, 2010 Forum Report: Proposed Standards for Communications Relating to Shareholder Meetings](#).

<sup>6</sup> Webcast participants were able to report "support" or "oppose," and also "not sure," in response to the final presentation of each standard. There were no "oppose" responses to any of the presented standards, and no more than two "not sure" responses.

<sup>7</sup> See the previously referenced [July 8, 2010 Forum Report](#).

We will therefore be considering possible projects for each of the following interests, as committed during the meeting or in response to subsequent requests:

- ▶ **Definition of standards** – This is, of course, the stated purpose of the E-Meetings program, and the Forum is committed to completing the review of proposals. We may, however, consider additional projects to support this process.
- ▶ **Communication processes** – The effective development of investor communications will require an understanding of what can be done with existing communications services, including how they can be most effectively applied to the particular requirements of “deconstructed” shareholder meetings.
- ▶ **Voting processes** – The “proxy plumbing” issues now being addressed by the SEC have focused increased attention on the need for cost-efficient, reliable processes to assure (a) the timely delivery of beneficial owners’ voting instructions and (b) the verification of both registered shareholders and authorized proxy holders who are present when voting is opened at the formal meeting.

We will welcome your suggestions for addressing these interests, or any other interests that support the establishment of marketplace standards for more effective investor communications.

*GL – July 16, 2010*

**Gary Lutin**, Chairman

**Program Panel:**

**Hye-Won Choi**, TIAA-CREF

**Margaret M. Foran**, Prudential Financial, Inc.

**Mary Beth Kissane**, Walek & Associates and National Investor Relations Institute (NIRI)

**Cary I. Klafter**, Intel Corporation

**Alvin P. Kressler, III**, Bloomberg

**James Kristie**, Directors & Boards

**Eric Nowak**, Swiss Finance Institute and European Group for Investor Protection (egip)

**David A. Silverman**, Blue Harbour Group and New York Society of Security Analysts  
(NYSSA)

**Timothy Smith**, Walden Asset Management

**Frank G. Zarb, Jr.**, Katten Muchin Rosenman LLP

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[July 29, 2010 Note](#): The idea of what became referred to as a "pre-meeting meeting" was raised during the Forum's open meeting by Tracey Rembert of Pax World Management, who subsequently granted permission to be publicly identified.