

CommonWealth REIT
Form DFAN14A
February 06, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

COMMONWEALTH REIT

(Name of the Registrant as Specified In Its Charter)

CORVEX MANAGEMENT LP

KEITH MEISTER

RELATED FUND MANAGEMENT, LLC

RELATED REAL ESTATE RECOVERY FUND GP-A, LLC

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RELATED REAL ESTATE RECOVERY FUND GP, L.P.

RELATED REAL ESTATE RECOVERY FUND, L.P.

RRERF ACQUISITION, LLC

JEFF T. BLAU

RICHARD O TOOLE

DAVID R. JOHNSON

JAMES CORL

EDWARD GLICKMAN

PETER LINNEMAN

JIM LOZIER

KENNETH SHEA

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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- .. Fee paid previously with preliminary materials.
- .. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

A Case Study In Worst-In-Class
Corporate Governance:
The Portnoys
Red Tape Bylaws
February 6, 2014

Table of Contents
Part I: Introduction To The
Red Tape Bylaws And Lessons Learned
Part
II:
The
Red
Tape

Bylaws
In
Action

Illustrative
Examples

Part III: Appendices

A. Corvex's April 12, 2013 Record Date Request

B. The

Portnoys

June

4,

2013

Deficiencies

Chart

2

I. Introduction To The
Red Tape Bylaws And Lessons
Learned
3

An Introduction To The Red Tape Bylaws
The Portnoys
Defense Against Shareholder Action
4

Given the hefty fees that the Portnoys are extracting every year from Commonwealth, it is not surprising that the Portnoys have created a governance structure aimed at preserving their control over Commonwealth

One of the tools the Portnoys used to silence shareholders is a series of bylaw requirements referred to as the **Red Tape Bylaws** that impose burdensome information requirements on any shareholder who wants to either initiate an action by written consent or make trustee nominations and other proposals at an annual meeting

Even after Corvex and Related provided more than 700 pages of detailed information for the ministerial task of requesting a record date on April 12, 2013, the Portnoys and their beholden trustees proceeded to challenge our compliance with each and every requirement of the Red Tape Bylaws

In fact, the Portnoys refused to even disclose all of their reasons for challenging the record date request under the Red Tape Bylaws until we asked the Arbitration Panel to compel them to do so

Thereafter, the Portnoys provided to us and the Arbitration Panel on June 4, 2013, the chart included here in Appendix B

Lessons From Our Experience With The Red Tape Bylaws
The Portnoys
Strategy To Prevent Shareholder Action

The Portnoys, with the assistance of their beholden Trustees, used the Red Tape Bylaws as a tool to impede shareholder action

The Portnoys made us litigate whether we had complied with even the most innocuous

Red Tape Bylaws (e.g., whether we had submitted our request by registered mail, return receipt requested

which, we did, in addition to delivering via email, hand delivery and Federal Express)

Many of these same requirements remain in place even after the Trustees amended the Bylaws on December 22, 2013 as part of a series of superficial and reversible check the box governance alterations

Further, Commonwealth took the position that no record date would be set until all of the Red Tape Bylaws disputes were fully litigated

a process that the Portnoys hoped would take no less than 18 months

5
The Portnoys actions speak louder than their promises ever will
The Portnoys use absurd interpretations of seemingly

innocuous
language
to
create nearly insurmountable barriers to shareholder action

Lessons From Our Experience With The Red Tape Bylaws
Not The First Time The Portnoys Deployed This Tactic

For example, in 2008, Locksmith Capital Management sought to allow shareholders to elect two independent nominees to the Board of TravelCenters of America, an RMR-managed public company, and vote to de-classify the Board.

Locksmith noted at the time: Instead of allowing shareholders an opportunity to vote

for our nominees and shareholder proposals, [Barry Portnoy's Board] invoked meaningless technicalities in order to create a Soviet style election and entrench the current

Board
of
Directors.

This
Board
has
no
shame.

(1)

Locksmith also noted at that time: We continue to be amazed that Barry Portnoy [and other then-directors of TravelCenters of America] have spent a significant amount of shareholder

money
in
order
to
disenfranchise
its
shareholders

(1)

6

(1)

Definitive Additional Solicitation Materials on Schedule 14A Filed on April 24, 2008 by Locksmith Capital Management LLC

Our experience with the Red Tape Bylaws and ensuing protracted litigation is not the first time the Portnoys have deployed this entrenchment tactic on the shareholders of an RMR-managed entity, and we firmly believe it will not be the last time

The Portnoys have a track record of trampling on shareholder rights in situations even outside of Commonwealth

Lessons From Our Experience With The Red Tape Bylaws
The Silent Bylaw

Barry
Portnoy
is
ready
to

spend
tens
of
millions
of
dollars
of
shareholders
money
to
press litigation of even the most outrageous and frivolous propositions, as long he
thereby delays and frustrates shareholder action

Even after thousands of pages of exhibits and over a week of live testimony, Barry
Portnoy refused to concede to the Arbitration Panel at the hearing that he had all of the
information required by the Red Tape Bylaws to set a record date

7

As long as the Portnoys and their beholden Trustees control Commonwealth, no
amount of window dressing will cleanse Commonwealth of the Silent Bylaw

Our
experience
with
the
Portnoys
over
the
past
year
has
revealed
to
us
the
Silent
Bylaw:
Shareholders
must
be
willing
to
spend
tens
of
millions
of
dollars
litigating
with
the
Portnoys

and
RMR
in
order
to
exercise
their
charter-granted
rights

Lessons From Our Experience With The Red Tape Bylaws
A Pattern Of Behavior

The Portnoys
hoped we would give up rather than litigate, just as Locksmith Capital
was forced to do in 2008

In

the
same
vein,
the
Portnoys
intend
to
never
allow
shareholders
the
ability
to
choose who manages CWH, in our view, regardless of the seemingly
straightforward nature of their promises

If the Portnoys are willing to litigate for 18 months utilizing shareholder funds to
prevent a vote from taking place, imagine how easy it will be for them to simply opt
back into Section 3-803 of MUTA to re-classify the board (assuming the Board gets
de-classified) or again amend the Red Tape Bylaws when a shareholder disagrees
with them

8

We believe the examples in the following section clearly prove that the
Portnoys never
intended to grant us a record date, instead using the ministerial
requirements of a record date request to block shareholder action

The
Portnoys
intentions
are
revealed
in
their
actions,
not
in
their
promises
or
what is written in their governing documents

II. The Red Tape Bylaws In Action
Illustrative Examples
9

Examples Of The Portnoys
Application Of The Red Tape Bylaws
The Portnoy Game Of Gotcha To Prevent Shareholder Action

The pages that follow illustrate some of the ways in which the Portnoys challenged our compliance with the Red Tape Bylaws

We also invite you to review our Record Date Request (Appendix A) and the full chart submitted by the Portnoys and their beholden Trustees

(Appendix B)

We believe that a review of these materials clearly demonstrates that the Portnoys never intended to grant us a record date

It is clear to us that the Portnoys were simply looking for every available excuse to force us into a protracted litigation with the hope that we would give up in the process

10

Nothing stops the Portnoys from utilizing this tactic again in the future

11

The Portnoy Game Of Gotcha

The Portnoys Claimed We Did Not Send By Registered Mail, Return Receipt Requested

Reality: The evidence proves that it was (in addition to being delivered via email, hand delivery and Federal Express):

12

Arbitration Panel ruling: 3%/three-year holding requirement to request a record date held invalid as a matter of law

CMF LP has not held 3% of CWH's shares for 3 years.

Reality

Arbitration Panel ruling: Request that all shares must be held in certificated form to request a record date

invalid as a matter of law

CMF LP did not provide a copy of a certificate for all shares of beneficial interest owned by such shareholder.

Reality

* See pages 23 and 24 in Appendix B

*

The Portnoy Game Of Gotcha

All Corvex/Related trades in CWH are publicly filed in our Schedule 13Ds, which were attached to our Record Date Request

13

* * *

Reality

* See pages 26, 27 and 28 in Appendix B

*

The Portnoy Game Of Gotcha

The Portnoys Claimed We Did Not Disclose Details Of Our Share Holdings

BYLAW REQUIREMENTS

DEFICIENCIES

[Notice must set forth: separately as to each shareholder
giving the notice and any Shareholder Associated Person:]

* * *

* * *

14

Page 1 of
Corvex Record

Date Request

Reality

* * *

The Portnoy Game Of Gotcha

The Portnoys Claimed We Did Not Disclose Derivative Transactions

BYLAW REQUIREMENTS

DEFICIENCIES

[Notice must set forth: separately as to each shareholder
giving the notice and any Shareholder Associated Person:]

15
Page 1 of
Annex D to
Corvex Record
Date Request
Reality
Arbitration Panel did not require Corvex/Related to disclose confidential offering memoranda
Reality

[Notice must set forth: separately as to each
shareholder giving the notice and any Shareholder
Associated Person:]

Page 1 of

Corvex Record

Date Request

Reality

The Portnoy Game Of Gotcha

The Portnoys Claimed We Did Not Disclose Our Investment Strategy

[Corvex]

BYLAW REQUIREMENTS

DEFICIENCIES

Appendix A: Corvex's Record Date Request

(1)

(1)

Appendix includes cover letter from Corvex Master Fund LP and Annex D (certain information regarding Corvex Master Fund Acquisition,

LLC

and

David

R.
Johnson).

Record

Date

Request

also

attached

a

stock

certificate

demonstrating

record

ownership

of

2,500

common shares of beneficial interest; our Definitive Consent Statement and Supplement No. 1; our original Schedule 13D and amendments that had been filed thereto; a record date request letter from David R. Johnson; and a record date request letter from & Co. on behalf of Corvex Master Fund LP.

16

Corvex Master Fund LP
712 Fifth Avenue, 23rd Floor
New York, New York 10019
April 11, 2013
Commonwealth REIT
Two Newton Place
255 Washington Street
Newton, MA 02458-1634

Attention: Secretary

RE: Request for a Record Date

Ladies and Gentlemen:

On the date hereof, Corvex Master Fund LP, a Cayman Islands limited partnership ("Corvex"), beneficially owns 5,437,750 common shares, representing a beneficial interest, par value \$0.01 per share ("Shares") of Commonwealth REIT, a Maryland real estate investment trust (the "Company"). The stock certificate evidencing Corvex's ownership of record of 2,500 Shares is set forth in Annex A hereto. Corvex is submitting the Annexes hereto, this Notice pursuant to the Company's Amended and Restated Bylaws (the "Bylaws"). Corvex's address is 100 Pine Street, 10th Floor, New York, New York 10019.

Appendix A: Corvex's Record Date Request

17

Corvex hereby requests a record date to determine the shareholders entitled to act by written consent to remove without cause Adam D. Portnoy, Joseph L. Morea, William A. Lamkin, and Frederick N. Zeytoonjian as trustees of the Company and any other persons or appointed to the Board of Trustees of the Company (the "Board") prior to the effective time of such removal (the "Removal"). Corvex is requesting such a record date because it believes that the Shares are currently undervalued and removing the Board would help increase the value, which would in turn benefit all shareholders. Except as set forth in this Notice, (i) there are no agreements, arrangements, understandings or other relationships between Corvex and any Shareholder Associated Person (as defined in the Bylaws) amongst themselves or with any other persons (including their names) in connection with the proposal of such business by Corvex; (ii) Corvex's engages in value-based investing across various market situations with identifiable catalysts and follows an opportunistic approach to investing with a specific focus on equity investments in distressed and distressed securities largely in North America; (iii) Corvex and any Shareholder Associated Person have made no purchases of Shares of the Company in the last 36 months; (iv) Corvex and any Shareholder Associated Person have made no Derivative Transactions (as defined in the Bylaws) in the last 36 months; (v) Corvex and any Shareholder Associated Person have no proportionate interest in Shares or instrument or arrangement.

Appendix A: Corvex's Record Date Request

18

contemplated by the term Derivative Transaction held, directly or indirectly, by a general or limited partnership in which Corvex and any Shareholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; and any Shareholder Associated Person, have no rights to dividends on the Shares owned beneficially by Corvex or any Shareholder Associated Person that are separated or separable from the underlying Shares. Corvex believes that other shareholders will support the Request but it is not in a position to make any representation regarding the subject. Additionally, except as set forth in this Notice and/or the ownership of Shares, Corvex and any Shareholder Associated Person (i) have no material interest in the proposal specified

(ii) do not anticipate any benefit in connection with such business. The investment advisor to Corvex is entitled to a performance based upon the overall increase in asset value of Corvex's assets, of which any profit and loss on the Shares would be a component. Corvex intends to submit a written consent in connection with the proposal specified in this Notice.

Information concerning Corvex and any Shareholder Associated Person as may purport to be required by the Bylaws, including information regarding Corvex's Share ownership, that is not otherwise included herein, is set forth in (i) the Definitive Consent Statement on Schedule 14A filed with the Securities and Exchange Commission (the "SEC") by Corvex Management LP, Related Fund Management, LLC, et. al., attached hereto as Annex B, (ii) the Schedule 13D and the amendments thereto filed with the SEC by Corvex Management LP, Related Fund Management, LLC, et. al., attached hereto as Annex C, (iii) the information regarding, among other things, transactions in Shares, attached hereto as Annex D, (iv) the record date request letter submitted by David R. Johnson, attached hereto as Annex E and (v) the record date request letter submitted by Cede & Co., attached hereto as Annex F. Except as set forth in this Notice and the annexes hereto, the information that purports to be required to be provided in connection herewith pursuant to the Bylaws is required in whole or none, as appropriate. The undersigned will, upon request, provide any additional information that may be reasonably required to the extent germane for the purpose of fixing a record date to determine shareholders entitled to act by written consent with respect to the Proposal.

Corvex believes that this notice fully complies with the applicable provisions of the Bylaws, the Company's Declaration of Trust and Maryland law. Any claim that this notice is in any way defective or deficient, and all further correspondence on this matter should be directed to Eduardo Gallardo at Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, telephone: (212) 351-3000, or egallardo@gibsondunn.com, so that there is adequate opportunity to address such claim in a timely fashion. The giving of this notice is not an admission that the procedures set forth in the Bylaws are legal, valid or binding, and Corvex is currently challenging certain Bylaws in Court for Baltimore City and reserves all rights to challenge the validity of other Bylaws and reserves all rights to assert a claim for or costs Corvex may sustain or incur, including attorneys' fees, in connection with disputes over the validity of this Notice or the Proposal.
[Signature Page Follows]

ANNEX D
CERTAIN INFORMATION
Corvex Master Fund LP
Corvex Entity
Number of Shares Held
Corvex Master Fund LP
2,748,861
(held through Goldman, Sachs & Co.)
Corvex Master Fund LP

2,686,389

(held through J.P. Morgan Clearing Corp)

Corvex Master Fund LP

2,500

(held of record)

RRERF Acquisition, LLC

Appendix A: Corvex's Record Date Request

19

Corvex Master Fund LP (Corvex) may be deemed to beneficially own 10,855,145.8571 common shares of beneficial interest share (the Shares) of Commonwealth REIT, a Maryland real estate investment trust (the Company). This includes (i) 5,4 beneficial interest of the Company held by certain entities affiliated with Related Fund Management, LLC (the Related Shares held in the aggregate by David R. Johnson (the Additional Shares) which may be deemed to be beneficially owned by Corvex securities laws. Corvex disclaims beneficial ownership with respect to the Related Shares and the Additional Shares. Corvex's share ledger of the Company is 712 5TH AVE 23RD FLR NEW YORK NY 10019. The information below sets forth Corvex's ownership of the Company.

RRERF Acquisition, LLC (RRERF) may be deemed to beneficially own 10,855,145.8571 Shares of the Company. This includes common shares of beneficial interest of the Company held by certain entities affiliated with Corvex Management LP and Keith (the Shares) and (ii) 9,645.8571 Shares held in the aggregate by David R. Johnson (the Additional Shares) which may be deemed to be beneficially owned by RRERF pursuant to applicable securities laws. RRERF disclaims beneficial ownership with respect to the Corvex Shares. RRERF's address as set forth in the share ledger of the Company is 60 COLUMBUS CIRCLE 18TH FL NEW YORK NY 10019. RRERF is a wholly owned subsidiary of Related Real Estate Recovery Fund, L.P. (Related). The general partner of Related is entitled to receive the return on invested capital across its entire portfolio (including, but not limited to, the investment in the Company). RRERF's principal investment objective generally is to invest in: (i) distressed loans originated for new construction, property conversions, or distressed loans secured by real estate assets that require significant repositioning, lease-up or improved management; (iii) portfolio of real estate loans secured by real estate assets held by failed or failing banking and other financial institutions; (iv) other interests in real estate assets if the general partner believes such assets could benefit from leveraging Related's operating platform and a modification of and (v) securities issued by real

estate and other companies with the intent of controlling distressed real estate assets held by such companies. The information holdings of Shares of the Company.

Related Entity

Number of Shares Held

RRERF Acquisition, LLC

5,435,250

(held through Pershing LLC)

RRERF Acquisition, LLC

2,500

(direct registered shares)

David R. Johnson

Appendix A: Corvex's Record Date Request

20

Mr. Johnson is engaged in the business of commercial and residential real estate sales and leasing. His primary business address is 1000 Highway 17, Seneca, South Carolina 29672. On April 11, 2013 Mr. Johnson entered into a letter agreement (the "Support Agreement") with Corvex and Related. Pursuant to the Support Agreement, among other things, Mr. Johnson has agreed (i) to cooperate with Corvex and Related in their efforts to remove the entire board of trustees of the Company, (ii) to vote all of his Shares in favor of the proposal to remove the entire board of trustees of the Company in connection with Corvex and Related's solicitation of written consents, at any special meeting or other meeting of the Company, (iii) to waive any transfer restrictions on his Shares. Corvex and Related have agreed to indemnify the Individual Shareholder for certain losses and expenses incurred by Mr. Johnson in connection with his cooperation with Corvex and Related and to reimburse the Individual Shareholder for his expenses in connection with the Support Agreement is attached hereto as **Exhibit 1**.

Except as set forth in this Notice, (i) during the past ten years, Mr. Johnson has not been convicted in a criminal proceeding (excluding violations or similar misdemeanors); (ii) Mr. Johnson does not directly or indirectly beneficially own any securities of the Company; (iii) Mr. Johnson does not own any securities of the Company which are owned of record but not beneficially; (iv) Mr. Johnson has not purchased or sold any securities of the Company during the past two years; (v) no part of the purchase price or market value of the securities of the Company owned by Mr. Johnson is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities; (vi) Mr. Johnson has not, in the past year was not, a party to any contract, arrangements or understandings with any person with respect to any securities of the Company, including but not limited to, joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of profits, or giving or withholding of proxies; (vii) no associate of Mr. Johnson owns beneficially, directly or indirectly, any securities of the Company; (viii) Mr. Johnson does not own beneficially, directly or indirectly, any securities of any parent or subsidiary of the Company; (ix) neither Mr. Johnson nor any of his associates was a party to any transaction, or series of similar transactions, since the beginning of the Company's last fiscal year to the date of the currently proposed transaction, or series of similar transactions, to which the Company or any of its subsidiaries was or is to be a party and the amount involved exceeds \$120,000; (x) neither Mr. Johnson nor any of his associates has any arrangement or understanding with respect to any future employment by the Company or its affiliates, or with respect to any future transactions to which the Company or any of its subsidiaries may be a party; and

Appendix A: Corvex's Record Date Request

21

(xi) Neither Mr. Johnson nor any of his associates has a substantial interest, direct or indirect, by security holdings or otherwise, that would require him to be acted on as set forth in this Notice.

Except as set forth in this Notice, there are no material proceedings to which Mr. Johnson or any of his associates is a party and the Company or any of its subsidiaries or has a material interest adverse to the Company or any of its subsidiaries. With respect to none of the events enumerated in Item 401(f)(1)-(8) of Regulation S-K of the Securities Exchange Act of 1934, as amended, or the past ten years.

Mr. Johnson beneficially owns 9,645.8571 Shares (representing less than 1% of the Company's outstanding Shares), which number 680.66 Shares which would be received upon the conversion of Mr. Johnson's 1,415.7559 shares of the Company's 6 1/2% Series D Convertible Preferred Shares (calculated based upon at a conversion rate of 0.480775 common shares per series D preferred share). Pursuant to the Support Agreement, Mr. Johnson may be deemed to share with the Corvex entities and the Related entities voting power and control with respect to the 9,645.8571 additional shares held by Mr. Johnson. Mr. Johnson owns Shares of the Company in several accounts including: (i) Carolina Premier Property Inc. Profit Sharing Plan (CPP/PSP); (ii) The Johnson Family Trust (D&S Trust); (iii) David R. Johnson IRA Contributory Account (DJ IRA); (iv) David R. Johnson SEP-IRA (DJ SEP); Brett B. Johnson and David R. Johnson IRA (DJ IRA); (v) Sheree Lea Johnson Roth Contributory IRA (Sheree Roth); (vi) Carolina Premier Property Inc. (CPP Corp); and (vii) Sheree Lea Johnson Roth IRA (Sheree IRA). All of Mr. Johnson's transactions in the Shares (including shares of HRPT Properties) over the last thirty-six months are listed below. Mr. Johnson has submitted a request through his broker, Charles Schwab & Co., Inc., to transfer the record name and have a physical certificate delivered to him.

[Chart detailing each trade since April 2010 included in submission]

Appendix
B:
The
Portnoys
June
4,
2013
Deficiencies

Chart
22

Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart
23

24
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

25
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

26
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

27
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

28
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

29
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

30
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

31
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

32
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

33
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

34
Appendix B: The Portnoys
June 4, 2013 Deficiencies
Chart

Additional Information Regarding The Corvex/Related Solicitation

35

Corvex Management LP and Related Fund Management, LLC have filed a definitive solicitation statement with the Securities and Exchange Commission (the "SEC") to (1)

solicit consents to remove the entire board of trustees of Commonwealth REIT (the "Removal Proposal"), and (2) elect

five

new
trustees
at
a
special
meeting
of
shareholders
that
must
be
promptly
called
in
the
event
that
the
Removal
Proposal
is
successful.

Investors and security holders are urged to read the definitive solicitation statement and other relevant documents because they contain important information regarding the solicitation.

The definitive solicitation statement and all other relevant documents are available, free of charge, on the SEC's website at www.sec.gov.