

NYSE Expands List of Broker Non-Vote Items, Narrowing Flexibility Under Rule 452

In an Information Memo to members issued on January 25, 2012, NYSE Regulation stated that it has determined that it will no longer continue its previous approach under Rule 452 of allowing member organizations to vote on certain types of corporate governance proposals without specific client instructions, including proposals pertaining to:

- de-staggering the board of directors,
- majority voting in the election of directors,
- eliminating supermajority voting requirements,
- providing for the use of consents,
- providing rights to call a special meeting, and
- certain types of anti-takeover provision overrides,

These sorts of proposals when included in proxy statements going forward will be treated by the Exchange¹ as “Broker May Not Vote” matters.

The Exchange stated it was changing its approach in light of a number of developments on this subject in recent years such as the fact that in 2010 it had narrowed Rule 452 to prohibit brokers from voting uninstructed shares in the election of directors (other than directors of a registered investment company); the Dodd-Frank Act codification of this approach; and public policy trends disfavoring broker voting of uninstructed shares.

The Information Memo is available at http://www.nyse.com/nysenotices/nyse/information-memos/pdf?memo_id=12-4

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If you have any questions about the issues addressed in this memorandum, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

¹ The “Exchange” refers to New York Stock Exchange LLC and NYSE Amex Equities LLC, collectively.