

SEC UPDATE



NYSE Adopts Proxy Working Group Recommendation to Eliminate Broker Discretionary Voting in 2008

The NYSE announced yesterday that it has proposed eliminating broker discretionary voting in respect of the election of directors. The proposed rule change to Rule 452 has been filed with the SEC, and remains subject to SEC approval. If approved, Rule 452, as amended, would be effective for shareholders meetings held on or after January 1, 2008.

Rule 452 currently allows brokers to vote on routine proposals if the beneficial owner of the voting shares has not given voting instructions regarding such shares at least 10 days before the shareholders meeting. The provisions of Rule 452 allowing brokers to vote on routine manner in such cases will not change. However, broker discretionary voting would no longer apply to uncontested director elections, as the proposed rule change would add director elections, whether or not contested, to the list of identified items as to which broker discretionary voting is not permitted.

In the release regarding the adoption of the proposed amendment, NYSE President & co-COO Catherine R. Kinney noted that “[t]he goal of the NYSE has been to not allow the broker to vote on any proposal that substantially affects the rights of shareholders.” She went on to say that “the election of directors is simply too important to ever be considered routine, even where the election is uncontested. Shareholder voting on the election of directors is a critical component of good corporate governance.”

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

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