

# ClientAlert

January 27, 2012

## NYSE and NYSE Amex Restrict Broker Discretionary Voting on Certain Corporate Governance Proposals

On January 25, 2012, the New York Stock Exchange (NYSE) and NYSE Amex (formerly the American Stock Exchange) announced a change to the application of Rule 452 to certain types of corporate governance proxy proposals which will limit the ability of brokers to vote their customers' shares without instruction.

Rule 452 governs when member organizations can vote their customers' shares without specific client instructions. Brokers may vote uninstructed client shares in their discretion on "routine" matters, but must abstain from voting on "non-routine" matters, resulting in "broker non-votes".

Recent amendments to Rule 452, provisions of the Dodd-Frank Act and other public policy trends disfavoring broker voting of uninstructed shares have led the exchanges to decide to no longer treat as "routine" matters certain corporate governance proxy proposals supported by management, including:

- de-staggering a company's board of directors;
- implementing majority voting in director elections;
- eliminating supermajority voting requirements;
- providing for the use of shareholder consents;
- providing rights to shareholders to call a special meeting; and
- providing for certain types of anti-takeover provision overrides.

As a result of this change in the application of Rule 452, companies may have more difficulty passing these types of proposals where a majority of the outstanding shares is required for approval, because the "broker non-votes" will have the same effect as votes against the proposals. To a lesser extent, proposals requiring a majority of the votes present and entitled to vote on the matter, or a majority of the votes cast on the matter, to pass may also be affected as brokers who might otherwise vote uninstructed shares with management cannot do so anymore.

A complete copy of the NYSE's Information Memo can be found [here](#).

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Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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