

PROXY UPDATE

January, 2012

NYSE Eliminates Broker Discretionary Voting on “Good” Corporate Governance Proposals

Recent Developments

In a surprise move, on January 24th, 2012 the NYSE issued a notice that certain “good” corporate governance proposals submitted for a shareholder vote by company management will no longer be designated as discretionary by the NYSE under Rule 452. NYSE Rule 452 regulates when brokers may cast discretionary votes without having received voting instructions from their customers. The NYSE stated that they re-examined broker discretionary voting on certain corporate governance proposals in light of “recent congressional and public policy trends disfavoring broker voting of uninstructed shares.”

The change comes as a surprise because many corporate governance proposals are the result of dialogue with shareholders, or a majority vote on a shareholder proposal in the previous year, and are viewed favorably by many institutions and proxy advisory firms. This is also a reversal of the position the NYSE had previously taken. For example, concerning the declassification of boards, the NYSE stated in a 2003 release, “In keeping with the goal of empowering investors with regard to corporate governance ... effective immediately, any corporate proposal which declassifies its board and provides for the annual election of the full slate of directors will be deemed routine and thus a ‘may vote’ item.”

Further, the notice was issued without a comment period, and was effective immediately for any companies the NYSE had not yet ruled on as of January 25th. It was timed after planning for the current proxy season had begun, and was loosely worded in that it listed examples of corporate governance proposals, below, without providing a definitive list:

- De-stagger 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
- Certain types of anti-takeover provision overrides

Without discretionary voting authority on these items, it will require considerably more effort to pass these types of proposals, especially since these proposals often require supermajority votes for approval.

For now, it is our understanding that auditor ratification proposals and proposals to increase authorized common stock (for general corporate purposes) are still discretionary - though all discretionary proposals are being looked at.

Next Steps

We would be happy to speak with you regarding any plans you may have to implement a corporate governance proposal, as you will likely need to re-evaluate your solicitation strategy in light of this change. We will continue to monitor this situation and keep you posted as appropriate. Should you have any questions about this or any other annual meeting related issues, please do not hesitate to contact your Morrow representative or call us at (203) 658-9400.

MORROW & CO. LLC

470 West Ave, Stamford, CT 06902 Tel. 203-658-9400

This newsletter is provided as a service to our clients and other friends of Morrow & Co. The enclosed material is being provided for informational purposes only and is not intended to provide advice for professional, legal or other purposes. If you have any comments or questions on these subjects or wish to discuss our services, please call your contact at Morrow & Co. If you wish to remove your name from our mailing list, please send an e-mail to: proxyupdate@morrowco.com