

# One Minute Memo<sup>®</sup>



## NYSE Further Limits Broker Discretionary Voting For 2012 Proxy Season

On January 25, 2012, the New York Stock Exchange (NYSE) published an information memorandum, No. 12-4, addressing the NYSE's recent examination of broker voting in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act and recent public policy trends. Based on this review, the NYSE has determined to further limit discretionary voting by brokers under Rule 452. Rule 452 provides for discretionary voting by brokers with respect to certain routine matters submitted to a vote by shareholders and identifies specific corporate actions that are deemed by the NYSE to not be routine.

Under the new interpretative guidance issued by the NYSE, certain corporate governance proposals submitted for shareholder approval will no longer be designated as routine matters under Rule 452 such that brokers will now be prohibited from casting a discretionary vote without client instruction with respect to such matters. The information memorandum identifies several corporate governance proposals as non-routine matters. Although not an exhaustive list, brokers will now be prohibited from casting a discretionary vote on proposals relating to the following matters:

- 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.

The information memorandum was issued without notice and is not subject to any comment period. Accordingly, the new restrictions on broker discretionary voting are effective immediately with respect to all votes that were not previously ruled on by the NYSE prior to January 25, 2012.

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