

# ALERT

## NYSE Eliminates Discretionary Broker Voting for Certain Corporate Governance Proxy Proposals

NEW EVENT/FILING

TYPE:

REGULATORY DEVELOPMENT

**January 25, 2012** - NYSE Regulation released an *Information Memo* prohibiting NYSE member organizations from voting customer shares without specific client instructions on certain types of corporate governance proxy proposals supported by company management. (See **NYSE Regulation's Information Memo Number 12-4**, [www.nyse.com](http://www.nyse.com)). The NYSE's Judith McLevey (VP, Corporate Actions & Market Watch) noted, in comments posted on her *Governance & Proxy* blog, that the NYSE's new approach to Rule 452 affects the voting of shares by all NYSE member firms on these matters for "all public companies, regardless of where the company is listed."

The NYSE previously ruled certain corporate governance proposals as 'Broker May Vote' matters for uninstructed customer shares when the proposal in question is supported by company management. However, as presented in the Memo, the Exchange now treats as "**Broker May Not Vote**" matters the following types of corporate governance proxy proposals, which are described in the Memo as examples:

- \* "proposals to 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,
- \* and certain types of anti-takeover provision overrides."

### BACKGROUND AND ANALYSIS

**Registered investment companies** will continue to have discretionary broker voting available for certain items. Most notably, the Information Memo does not reference any further changes to the language of Rule 452, e.g., 452.11(19), in which the prohibition of discretionary broker voting in director elections "shall not apply in the case of a company registered under the Investment Company Act of 1940." In another example, McLevey noted in her commentary on the Memo that the ratification of auditors remains a routine "broker may vote" matter, such that companies will still be able to use discretionary broker votes to help secure a quorum.