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NYSE Ends Broker Discretionary Voting for Certain Corporate Governance Proposals

The New York Stock Exchange has announced that, in keeping with recent Congressional and public policy trends disfavoring broker voting of uninstructed shares (including the elimination of such voting in director elections by the NYSE and the elimination of such voting on executive compensation matters by the Dodd-Frank Act), the Exchange would end its prior policy of allowing broker voting on certain corporate governance proposals that are supported by management. Under this policy change, which is effective immediately, NYSE brokers will no longer be able to vote uninstructed shares on such proposals, including proposals to de-stagger the board of directors, implement majority voting in the election of directors, eliminate supermajority voting requirements, provide for the use of written consents, provide rights to call a special meeting and eliminate certain anti-takeover provisions.

This change presumably will not apply to auditor ratification proposals, so broker non-votes can still be counted as “present” at the meeting and the ability to establish a quorum should not be affected.

Companies should note that this change could affect the outcome of votes on these types of proposals, e.g., for companies where shareholder approval is measured by reference to shares entitled to vote on the matter, broker non-votes would function as a “no” vote.

Companies listed on NASDAQ will also be impacted by these rules, as the change applies to NYSE brokers, not solely to NYSE-listed companies.

For the announcement, see http://www.nyse.com/nyse/nyseinformation-memos/detail.jsessionid=02DCBE2E3673AC6311912F166461C2EE?memo_id=12-4

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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