

January 31, 2012

NYSE Further Restricts Broker-Discretionary Voting under Rule 452

On January 25, 2012, the New York Stock Exchange and the NYSE Amex (collectively, the “NYSE”) issued guidance further limiting the ability of brokers under Rule 452 to vote customer shares without client instructions with respect to certain types of corporate governance proposals.

Rule 452 permits brokers to vote uninstructed customer shares in their discretion on “routine” or “Broker May Vote” matters, but prohibits so-called broker-discretionary voting with respect to “non-routine” or “Broker May Not Vote” matters.

Following a recent congressional and public policy trend against broker-discretionary voting, the NYSE determined that it will no longer permit broker-discretionary voting with respect to corporate governance proposals and, by way of example, classified the following as “Broker May Not Vote” matters:

- proposals to declassify the board of directors;
- proposals to implement majority voting in the election of directors;
- proposals to eliminate supermajority voting requirements;
- proposals regarding the use of written consents;
- proposals regarding the right to call special meetings; and
- proposals enacting certain types of anti-takeover provision overrides.

As a result of this guidance, brokers will no longer be able to vote uninstructed shares with respect to corporate governance proposals and such broker non-votes may not be counted for purposes of establishing a quorum for shareholder meetings where only such proposals are being considered. Thus, companies may find it more difficult to pass corporate governance proposals (or defeat similar shareholder proposals) in the future. Proposals that require a majority of the outstanding shares for approval will be particularly challenging as any broker non-votes will be considered votes against the proposal. These changes are effective immediately and will affect the upcoming 2012 proxy season.

The NYSE continues to consider the ratification of auditors a “Broker May Vote” matter, thus broker votes may be used to establish a quorum for a shareholder meeting where such a proposal is being heard.

NOTE: Because Rule 452 governs when a NYSE-member may vote customer shares, these changes affect both NYSE listed and non-NYSE listed companies.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

Lee Edwards
Beijing
+86.10.5922.8001
lee.edwards@shearman.com

Alan Seem
Beijing
+86.10.5922.8002
alan.seem@shearman.com

Stephan Hutter
Frankfurt
+49.69.9711.1230
shutter@shearman.com

Katja Kaulamo
Frankfurt
+49.69.9711.1719
katja.kaulamo@shearman.com

Marc O. Plepelits
Frankfurt
+49.69.9711.1299
mplepelits@shearman.com

Matthew Bersani
Hong Kong
+852.2978.8096
matthew.bersani@shearman.com

Pamela Gibson
London
+44.20.7655.5006
pgibson@shearman.com

Richard Price
London
+44.20.7655.5097
rprice@shearman.com

Tobia Croff
Milan
+39.02.0064.1509
tobia.croff@shearman.com

Fabio Fauceglia
Milan
+39.02.0064.1508
fabio.fauceglia@shearman.com

Danielle Carbone
New York
+1.212.848.8244
danielle.carbone@shearman.com

Robert Evans, III
New York
+1.212.848.8830
revans@shearman.com

Stephen Giove
New York
+1.212.848.7325
sgiove@shearman.com

Lisa L. Jacobs
New York
+1.212.848.7678
ljacobs@shearman.com

Manuel A. Orillac
New York
+1.212.848.5351
morillac@shearman.com

Michael Schiavone
New York
+1.212.848.4813
mschiavone@shearman.com

Antonia E. Stolper
New York
+1.212.848.5009
astolper@shearman.com

Robert C. Treuhold
New York
+1.212.848.7895
rtreuhold@shearman.com

Hervé LetrégUILly
Paris
+33.1.53.89.71.30
hletreguilly@shearman.com

Bertrand Sénéchal
Paris
+33.1.53.89.70.95
bsenechal@shearman.com

Sami L. Toutounji
Paris
+33.1.53.89.70.62
stoutounji@shearman.com

Michael S. Bosco
Rome
+39.06.697.679.200
michael.bosco@shearman.com

Domenico Fanuele
Rome
+39.06.697.679.210
dfanuele@shearman.com

John D. Wilson
San Francisco
+1.415.616.1215
jwilson@shearman.com

Robert Ellison
São Paulo
+1.55.11.3702.2220
robert.ellison@shearman.com

Andrew R. Schleider
Singapore
+65.6230.3882
aschleider@shearman.com

Masahisa Ikeda
Tokyo
+81.3.5251.1601
mikeda@shearman.com

Jason R. Lehner
Toronto
+1.416.360.2974
jlehner@shearman.com

Abigail Arms
Washington, DC
+1.202.508.8025
aarms@shearman.com