



California Corporate & Securities Law

Did The SEC Really Have Good Cause To Grant Accelerated Approval Of Amendments To NYSE Rule 452?

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On September 9, 2010, the Securities and Exchange Commission granted accelerated [approval](#) of the New York Stock Exchange's proposed amendments to Rule 452. Echoing the Queen of Hearts ("Sentence first – verdict afterwards"), the SEC at the same time announced that it was soliciting comments on the "proposed" rule change.

The NYSE proposed the rule to meet the requirements of Section 957 of the Dodd–Frank Wall Street Reform and Consumer Protection Act. Section 957 requires the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 of the Securities Exchange Act of 1934 from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The votes covered by Section 957 are votes with respect to the election of a member of the board of directors of an issuer (with one exception applicable to investment companies), executive compensation, or any other significant matter, as determined by the Commission, by rule.

Note that Section 957 quite clearly applies to securities registered under Section 12 of the Exchange Act. Further, Section 957 applies to votes with respect to executive compensation. The NYSE's amendments to Rule 452 are not so limited. Thus, the amendments exceed the mandate of Section 957. In contrast, the [rule change](#) adopted by the NASDAQ Stock Market LLC and approved by the SEC is limited to securities registered under Section 12 of the Exchange and votes with respect to executive compensation.

In granting accelerated approval to the "proposed" rule amendments, the SEC relied on the fact that Congress did not provide for a phase-in period for Section 957. However, to the extent that the rule amendments exceed Section 957, it would seem that the SEC did not have "good cause" to grant accelerated approval. Here are my [comments](#) on the proposed amendments.

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