

## Corporate & Financial Weekly Digest

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### NYSE Restricts Broker Discretionary Voting

On January 25, the New York Stock Exchange (NYSE) issued Information Memo 12-4, which announced significant limitations on the ability of member brokers to vote customer shares without specific instructions from their clients. Previously, the NYSE permitted brokers to vote uninstructed shares with respect to certain corporate governance matters proposals when the proposal in question was supported by the issuer's management. Going forward, absent specific instructions from customers, brokers will no longer be allowed to vote customer shares with respect to various corporate governance proposals, including proposals to de-stagger the board of directors, regarding 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.

These limitations highlight an ongoing trend of curtailing broker discretionary voting. In 2010, the NYSE amended Rule 452 (which governs broker discretionary voting) to prohibit brokers from voting uninstructed shares in the election of directors. More recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act, prohibited brokers from voting uninstructed shares on executive compensation matters.

As a result of these changes, absent placing a "routine" matter (such as ratification of auditors) on the agenda companies may face challenges establishing a quorum at stockholders' meetings or, even if a quorum is obtained, obtaining sufficient votes to approve corporate governance proposals once considered "routine". Since most brokers are NYSE member organizations, the changes will affect Nasdaq and NYSE listed issuers alike.

Click [here](#) to view the full text of Information Memo 12-4.

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