



**REGULATORY  
INFORMATION  
BULLETIN**

**RBO-12-02  
January 25, 2012**

**TO: OTP Holders and OTP Firms**

**FROM: NYSE Regulation, Inc.**

**SUBJECT: Application of NYSE Arca Options Rule 9.4 to Certain Types of Corporate Governance Proxy Proposals**

This notice relates to the application of NYSE Arca Options Rule 9.4 ("Rule 9.4") to certain types of corporate governance proxy proposals. Rule 9.4 governs when NYSE Arca permit holders may vote customer shares without specific client instructions, and permits such voting only when the permit holder is permitted to do so by the rules of another self-regulatory organization of which the firm is a member, provided that the records of the permit holder clearly indicate the procedure it is following. In the past, both New York Stock Exchange ("NYSE") and NYSE Amex have ruled certain corporate governance proposals as "Broker May Vote" matters for uninstructed customer shares when the proposal in question is supported by company management.

More recently, the approach to broker voting of uninstructed shares has narrowed through changes in NYSE rules as well as through legislative action. For example, the NYSE amended Rule 452 in 2010 to prohibit brokers from voting uninstructed shares in the election of directors (other than directors of an investment company registered with the SEC under the Investment Company Act of 1940), and the Dodd-Frank Act codified this approach. In addition the Dodd-Frank Act specifically prohibited brokers from voting uninstructed shares on executive compensation.

In light of these and other recent congressional and public policy trends disfavoring broker voting of uninstructed shares, the NYSE has reexamined its treatment of such proposals under NYSE Rule 452, and it has determined that, effective immediately, it will no longer continue its previous approach of allowing member organizations to vote on such proposals without specific client instructions. Proposals that the NYSE had previously ruled as "Broker May Vote" including, for example, 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, that are included on proxy statements going forward will be treated as "Broker May Not Vote" matters.

As is always the case, listed companies are urged to consult with NYSE Arca staff with any questions regarding particular proposals

**Contact Information**

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