

Investments & Wealth

MONITOR

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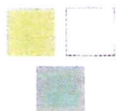
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FEATURE

Rule 452: What It Means to You

By Artie Regan

On July 1, 2009, the Securities and Exchange Commission (SEC) approved the New York Stock Exchange's (NYSE) amendment to Rule 452, eliminating brokers' ability to vote their discretion in annual elections for directors of publicly traded companies.


An estimated two-thirds of publicly traded shares are held by brokers on behalf of clients (the "beneficial owners"). Now brokers can use their discretion to vote their clients' shares on routine items such as uncontested annual elections if the broker does not receive voting instructions from the beneficial owner. But the rule change, effective January 1, 2010, will prevent brokers from voting uninstructed client shares in all publicly traded companies with the exception of mutual funds.¹

Supporters of the rule change say that because most brokers follow management's recommendation when voting, companies enjoy greater support than actually exists. Supporters also say that directors should be elected by those with an economic interest in the company.

Brokers' votes in director elections historically have represented a significant percentage of the total. The Rule 452 change will make a difference in whether annual meetings make quorum. Corporate secretaries, investor relations professionals, SEC lawyers, transfer agent representatives,

investment bankers, and investment advisors all will face challenges because the only shares voted behind a broker's name will be the ones from clients.

Investment advisors should do the following:

- Educate clients about the voting process.
- Inform clients that if they fail to submit voting instructions their shares will not be counted.
- Prepare clients to receive phone calls from proxy solicitors retained by the issuer to engage in vote solicitation.
- Tell clients that by voting they will stop the phone calls. 

Artie Regan is the founder and president of Regan & Associates, Inc., a New York-based proxy solicitation firm. He earned a BS in business management and organizational behavior from New York University. Contact him at aregan@reganproxy.com.

Endnote

- ¹ The amendments to Rule 452 do not apply to companies that are registered under the Investment Company Act of 1940, as amended, and discretionary broker voting still will be permitted with respect to such companies.