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THE NYSE'S AMENDMENT OF RULE 452: PRACTICAL TIPS FOR PUBLIC COMPANIES

The Rule 452 amendment, which eliminates broker discretionary voting in uncontested director elections, promises to reduce voting by retail investors, while increasing the influence of institutional shareholders and proxy advisory firms. The author examines these effects as they relate to costs, quorums, and majority voting, among other issues. She closes with some practical suggestions for management to consider in preparing for the 2010 proxy season.

By Jaclyn Liu *

Much has been written about the New York Stock Exchange's recent amendment of NYSE Rule 452 to eliminate broker discretionary voting for uncontested election of directors. Although this article provides a summary of the rule change, its main purpose is to provide public companies – especially public companies with a smaller market capitalization and a large retail shareholder base – with practical advice on steps they should consider and implement prior to their 2010 annual meetings.

OVERVIEW OF OWNERSHIP OF SECURITIES IN PUBLIC COMPANIES

Before providing a summary of the NYSE Rule 452 amendment, it is useful to summarize the basics of securities ownership in publicly traded companies in the U.S. Ownership of securities in publicly traded companies in the U.S. can be divided into registered owners and beneficial owners. A registered owner holds the securities of a publicly traded company in its own name, and that name is registered on the record books of the company kept by the transfer agent. A company has access to registered owners' information at any time. A beneficial owner, on the other hand, has all rights attendant to ownership like a registered owner, including voting, rights to dividends, and the right to dispose of the shares, but its name is not registered on the record books of the company. Instead, the securities are held generally in the name of the brokerage firm or financial institution that facilitated the purchase of the securities; this arrangement is commonly referred to as holding the shares in "street name."

A majority of the shares of publicly traded companies in the U.S. are held in street name through brokerage or financial institution accounts. The National Investor Relations Institute, the world's largest investor relations association, estimates that more than 75% of all public shares are held in street name.[1] Shares held by retail investors are typically held in the name of the brokerage firms, whereas institutional investors typically hold securities through banks (which are not subject to Rule 452). Because beneficial owners' names are not

[1] Letter of National Investor Relations Institute to the Securities and Exchange Commission, dated March 16, 2009, regarding NYSE Rule 452 amendment, *available at* http://www.governanceprofessionals.org/images/society/doc/NIRI_comment-letter_Rule452.pdf.

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