

NYSE proposes to amend “votes cast”

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A proposed NYSE amendment would eliminate the requirement to include abstentions as “votes cast” against a company’s proposal. Instead, companies would be able to follow their own governing documents and state law.

Under current New York Stock Exchange rules requiring shareholder approval under certain circumstances for listing additional securities of adopting equity compensation plans, the NYSE Listed Company Manual mandates that the company’s proposal is deemed approved only if it received a majority of “votes cast.” While the rule does not explicitly state which votes should be counted as cast, NYSE has historically advised companies that abstentions should be treated as votes cast for purposes of the rule – effectively treating them as votes cast *against* the proposal. As a result, in calculating the minimum votes required for shareholder approval, the number of votes cast in favor of a proposal must exceed the aggregate number of votes cast against the proposal *plus* abstentions. (Broker non-votes are not considered “votes cast” and therefore have no effect on voting outcomes.)

NYSE’s [proposal](#) would amend the Listed Company Manual to provide that a company should determine whether a proposal has received a sufficient number of votes cast in accordance with its own governing documents and applicable state law. NYSE’s explanation for the amendment notes that this is consistent with Nasdaq guidance on the treatment of abstentions.

Under Delaware law, abstentions are not considered “votes cast,” although companies may elect to alter voting standards in their governing documents.

The proposal, if approved by the SEC, would apply to shareholder votes required for stock issuances in related party transactions, 20% or more issuances and changes of control, as well as for equity compensation plans. It does not affect any votes required by state law.

NYSE-listed companies may wish to review their charter and bylaws in light of this anticipated rule change.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Maurice Blanco

+55 11 4871 8402
+1 212 450 4086
maurice.blanco@davispolk.com

Ning Chiu

+1 212 450 4908
ning.chiu@davispolk.com

Joseph A. Hall

+1 212 450 4565
joseph.hall@davispolk.com

Michael Kaplan

+1 212 450 4111
michael.kaplan@davispolk.com

James C. Lin

+852 2533 3368
james.lin@davispolk.com

Emily Roberts

+1 650 752 2085
emily.roberts@davispolk.com

Richard D. Truesdell, Jr.

+1 212 450 4674
richard.truesdell@davispolk.com

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