

NYSE Proposes to Eliminate Separate Voting Standard

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Companies seeking approval of equity compensation plans as required under NYSE rules have often struggled to understand, and describe in proxy statements, the application of the NYSE voting standard alongside the state law provisions, for determining approval of the plan. The NYSE has now proposed to eliminate its own separate [voting standard](#).

Where the NYSE makes shareholder approval a prerequisite to the listing of any additional or new securities, Section 312.07 mandates that the proposal obtain a minimum vote of a majority of votes cast, provided that the total vote cast on the proposal represents over 50% in interest of all securities entitled to vote on the proposal. This provision can be baffling, for example, if the treatment of abstentions under applicable state law differs from how abstentions are calculated under the NYSE voting standard. In some states, a "votes cast" standard would not include abstentions. In addition, the 50% requirement layers another level of complexity with respect to broker non-votes, which would be applied toward state law quorum obligations.

The NYSE proposal to remove its own voting requirement, which will also affect other NYSE-required votes, including issuances of over 20% or more of a listed company's outstanding common stock or voting power, recognizes that it is unnecessary and confusing to mandate two separate voting standards to any proposal subject to the NYSE rules, while applying only the state law requirement for all the other proposals. Nasdaq does not have a similar requirement.

The NYSE has requested that the SEC approve the proposed rule change on an accelerated basis so that, in the case of companies holding shareholder votes on proposals currently subject to Section 312.07, such proposals would be subject only to the requirements of state law.

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.

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