

SEC Approves NYSE Proposal to Eliminate Separate Voting Standard

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The SEC has approved, upon filing of the rule [proposal](#) last week, a NYSE proposal to eliminate its separate voting standards anytime shareholder approval is a prerequisite to the listing of any additional or new securities, including pursuant to equity compensation plans or for new shares in transactions. We previously discussed the proposed rule change in April on this [post](#) and the complexities related to the NYSE calculation working in conjunction with state law requirements. The rule filing was subsequently removed from the NYSE site but has now been approved and is already effective.

Prior to this rule change, Section 312.07 of the Listed Company Manual required approval by a majority of votes cast, subject to a quorum requirement that the total vote cast on the proposal must represent over 50% in interest of all securities entitled to vote. This standard governed proposals under Section 312.03 (approval of the sale or transfer of shares where the size of the issuance exceeds thresholds established in the rule or would result in a change of control) and Section 303A.08 (shareholder approval of equity compensation plans and related material amendments). Now, the rule has been amended to remove the quorum requirement.

In its rule filing, the NYSE noted that listed companies are already subject to quorum requirements under state law and bylaws or other governing documents, which are frequently more stringent than the NYSE requirement, so that the NYSE's separate quorum rule is unnecessary and became confusing as it required disclosure and application of two distinct requirements. Going forward, Section 310.00 of the Listed Company Manual will govern quorum instead, which mandates that quorum should be sufficiently high to insure a representative vote and that the NYSE will give careful consideration to quorum provisions of less than a majority of the outstanding shares.

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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