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Securities Alert: NYSE Eliminates Uninstructed Broker Voting on Certain Corporate Governance Issues

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CLIENT ALERT | 1.26.2012

The New York Stock Exchange (NYSE) published **Information Memo 12-4** on January 25, 2012, in which NYSE altered its previous position under NYSE Rule 452 of allowing brokers to vote customer shares in certain situations without specific client instructions. Before Information Memo 12-4, brokers could vote uninstructed customer shares on certain corporate governance proposals included in company proxy statements when the proposal in question was approved by company management. Now, NYSE has determined that certain of these corporate governance proposals which had previously been "broker may vote" matters would now be treated as "broker may not vote" matters. The proposals identified in Information Memo 12-4 include de-staggering the board of directors, majority voting in the election of directors, eliminating supermajority voting requirements, providing for the use of consents, providing rights to call a special meeting, and certain types of anti-takeover provision overrides. ***Since Rule 452 governs the conduct of brokers who are NYSE members, the change affects the voting of shares by brokers on these proposals when presented by any public company regardless of where that public company's shares are listed.***

Brokers may continue to vote uninstructed customer shares for the ratification of auditors, which will enable companies to use those votes to establish a quorum for shareholder meetings.

As the 2012 proxy season begins, public companies should review the proposals to be submitted to their shareholders in the context of these recent changes in NYSE's position as well as the Dodd-Frank Act's prohibition on brokers voting uninstructed shares with respect to executive compensation matters.

A copy of Information Memo 12-4 can be found at the following address: <http://www.nyse.com/nyse/nyse/nyse/information-memos/list>.