



SEC

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Investor Bulletin:

Voting in Annual Shareholder Meetings -What's New in 2012

Over the next few months, investors can expect to receive proxy materials for annual shareholder meetings or a related notice advising shareholders how they can access these materials. Shareholder voting typically takes place at the annual shareholder meeting, which most U.S. public companies hold each year between March and June.

There are three new or continuing developments this year:

- **Shareholder Proposals on Proxy Access.** Shareholders may be asked to vote on shareholder proposals to establish procedures to include shareholder director nominations in company proxy materials.
- **Uninstructed Broker Votes.** Restrictions have increased on the circumstances in which brokers may vote on behalf of clients who do not send in voting instructions. That means that brokers will be casting discretionary votes on a narrower range of items this year.
- **Say-on-pay Votes.** Starting last year, most public companies were required to have advisory say-on-pay votes and to choose how often to hold such votes in the future. This year, shareholders will vote again to approve executive compensation at those companies that have chosen to hold annual advisory say-on-pay votes.

Shareholder Proposals on Proxy Access

Typically, the board of directors nominates board candidates, whose names appear in the company's proxy materials for director elections. Shareholders do not have an automatic right to have their own director nominees included in these proxy materials. Where shareholders do have this ability, the names of director candidates nominated by qualified shareholders appear in the proxy materials alongside the names of the candidates nominated by the board of directors. This process gives shareholders direct access to the proxy materials for nominating directors and is often called "proxy access."

This year, as a result of amendments to the shareholder proposal rule, eligible shareholders have the right to have proposals that call for the adoption of proxy access procedures included in company proxy materials. (Note that the right to submit shareholder proposals about proxy access procedures is different from the right to nominate director candidates.) Shareholder resolutions on proxy access may either be advisory or binding, and investors have filed both kinds this year. An advisory resolution approved by shareholders leaves the final decision to the company's board of directors on whether to adopt a proxy access procedure. A binding resolution takes effect once it is approved by shareholders. (Depending on the company, approval may require more than a simple majority of votes.)

Court Decision on Proxy Access Rule

In August 2010, the SEC adopted a new rule that would have required companies to include eligible shareholders' director nominees in company proxy materials in certain circumstances. The rule was contested in court, however, and in July 2011, the U.S. Court of Appeals for the D.C. Circuit struck down this rule.

Uninstructed Broker Votes

The New York Stock Exchange (NYSE) allows brokers to vote on certain items on behalf of their clients, if the broker has received no voting instructions from those clients within 10 days of the annual meeting. These votes are called uninstructed or discretionary broker votes. Brokers are only allowed to cast uninstructed broker votes on "routine" items, and the scope of routine items has narrowed over the years. This year, the NYSE announced that brokers may no longer cast uninstructed votes on certain corporate governance proposals. These include proposals to de-stagger the board of directors (so that all directors are elected annually), adopt majority voting in the election of directors, eliminate supermajority voting requirements, provide for the use of consents, provide rights to call a special meeting, and override certain types of anti-takeover provisions. Previously, the NYSE had permitted a broker to cast uninstructed votes on these proposals if they had the support of the company's management.

Two other important restrictions on discretionary broker voting have been in effect since 2010. First, brokers can no longer cast uninstructed votes in the election of directors (except for certain mutual funds). Second, brokers are prohibited from voting uninstructed shares on executive compensation matters, including say-on-pay votes.

As the ability of brokers to vote uninstructed shares shrinks, the importance of shareholder voting grows. If shareholders do not vote, they cannot expect their broker to vote for them on an increasing range of issues.

Say-on-pay Votes

The say-on-pay rules took effect last year for most companies with two exceptions. First, smaller reporting companies have until 2013 to comply. The second exception concerns companies that borrowed money under the Troubled Asset Relief Program (TARP) and have not yet paid it back. TARP companies are required to hold annual say-on-pay votes until they pay back all the money they borrowed from the government, at which time they will become subject to the say-on-pay rules applicable to other companies.

The rules require three non-binding votes on executive compensation:

- **Say-on-pay Votes.** Companies must provide their shareholders with an advisory vote on the compensation of the most highly compensated executives. The votes are non-binding, leaving final decisions on executive compensation to the company and its board of directors. Companies are now required to disclose whether and, if so, how their compensation policies and decisions have taken into account the results of their most recent say-on-pay vote. This disclosure generally appears in the compensation discussion and analysis section of the proxy statement. Shareholders can review this year's proxy statements to find out how companies have responded to last year's say-on-pay votes.

- **Frequency Votes.** Companies also were required last year to provide their shareholders with an advisory vote on how often they would like to be presented with the say-on-pay votes—every year, every second year, or every third year. Like say-on-pay votes, frequency votes are non-binding. After each advisory vote on frequency, companies must disclose their decision as to how frequently they will hold advisory say-on-pay votes. Companies would typically provide this disclosure either in a Form 8-K or Form 10-Q, both of which are filed with the SEC. Many companies provide this information shortly after their annual meeting. These forms are publicly available on the Commission’s website at www.sec.gov/edgar/searchedgar/webusers.htm. Companies typically file several 8-Ks in a year. Look for those referring to Item 5.07.
- **Golden Parachute Arrangements.** The term, “golden parachute” generally refers to compensation arrangements and understandings with top executive officers in connection with an acquisition, merger or similar transaction. When companies seek shareholder approval of a merger or acquisition, they are required to provide their shareholders with an advisory vote to approve, in the typical scenario, the disclosed golden parachute compensation arrangements between the target company and its own named executive officers or those of the acquiring company. The company is not required to conduct such a vote, however, if the golden parachute disclosures were included in executive compensation disclosures subject to a prior say-on-pay vote.

Additional Information

For our **Investor Bulletin: Say on Pay and Golden Parachute Votes**, visit investor.gov/news-alerts/investor-bulletins/say-pay-golden-parachute-votes.

For our **Spotlight on Proxy Matters**, visit www.sec.gov/spotlight/proxymatters.shtml.

For our **Using Edgar - Researching Public Companies**, which provides information on how to search for company documents, such as Forms 8-K, in the SEC’s EDGAR database, visit investor.gov/researching-managing-investments/researching-investments/using-edgar-researching-public-companies.

For additional educational information, see the SEC Office of Investor Education and Advocacy’s website for investors, www.investor.gov.

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