

## Rule Change

### NYSE CLAMPS DOWN ON DISCRETIONARY VOTING

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Late last year the NYSE approved a change to Rule 452 to preclude member organizations, primarily brokers, from issuing discretionary votes for any advisory agreement proposal relating to a "Change of Control" - the transfer of at least 25% ownership of a registered investment advisor. We recently learned that the NYSE expanded this ruling to include all advisory agreement and/or sub-advisory agreement proposals. Going forward, any shareholder meetings which include these proposals, no matter the actual change to the agreement(s), will now be deemed non-routine. As a result, the voting responsibility will lie solely in the hands of the underlying shareholders.

Since most investors tend to be indifferent regarding voting proxies, the vast majority of proxy material mailed to shareholders finds the trash rather than being reviewed and voted. Currently the average initial response from a proxy mailing is approximately 12%-17% depending on the type of fund and how it is sold. Without broker discretionary voting the mail response rates alone for an advisory or sub-advisory proposal will not meet the required quorum or favorable vote requirement. With that said, it will be necessary for issuers and mutual funds to conduct additional solicitation efforts which include, but not limited to, supplemental mailings and/or phone solicitation campaigns.

#### LOOKING FORWARD:

Most recently, the NYSE and SEC have been considering the elimination of discretionary voting authority all together. Currently, the only proposal under which Rule 452 applies to is the election of trustees/directors which may soon come to an end. The largest impact will likely be felt by closed-end funds which are currently required to hold annual shareholder meetings to vote on a slate of directors/trustees, at a minimum. Without the routine vote, closed-end funds will now need to proactively solicit holders by conducting follow-up mailings and/or phone solicitations in order to bridge the gap between the initial mail response and the required quorum. Again, with the average mail response running between 12%-17% and the average quorum requirement of 50%, that gap is fairly significant.

## Electronic Proxies

### SEC PROPOSES AMENDMENTS TO PROXY RULES TO ALLOW THE INTERNET AVAILABILITY OF PROXY MATERIALS

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In December 2005, the SEC proposed amendments to the Securities and Exchange Act of 1934 providing for an alternative method to deliver proxy materials for shareholder meetings. The proposed methodology would look to take advantage of the Internet and corresponding technology in order to furnish proxy materials electronically. By doing so, the expense of printing proxy statements and additional postage costs required when including the statement in the initial proxy package would be drastically reduced.

The proposed plan would most likely require a fund to physically mail a shareholder meeting notice but simply provide a website to view the proxy statement and any other supplemental material. This is the "notice and access" model as defined by the SEC.

There is still a fair amount of details to work out if this new policy is instituted such as - What will the initial mailing package consist of? Who will supply actual material if requested? What is the required time to supply the meeting notice? Should a proxy card be supplied in the initial mailing or electronically? These issues are currently being thought through by the SEC.

"Implementing the SEC's notice and access model will create huge cost savings by eliminating the need to print and mail the proxy statement." according to Thomas Nader, Senior Managing Director at The Altman Group, Inc. "However, this method of proxy notification can adversely affect voter response rates. Requiring shareholders to locate and pull the proxy statement online is actually asking a lot of shareholders, who tend to be apathetic towards the proxy process. Nonetheless, if this new process is instituted, there are ways to offset the decline in response rates and still capitalize on the cost savings."

This proposed rule is currently under review and should be made official sometime early 2007.

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