

## NYSE to Eliminate Broker Discretionary Voting for the Election of Directors

On February 26, 2009, the New York Stock Exchange LLC (NYSE) filed with the Securities and Exchange Commission (SEC) its fourth amendment to a proposal that would revise NYSE Rule 452. The proposal would characterize an uncontested director election as a “non-routine” matter over which brokers are prohibited from exercising discretionary authority to vote customer shares for which they have not received timely instructions.

In addition to the obvious effect the rule change could have on director elections, the change may create challenges for issuers in establishing a quorum at annual meetings. That concern is heightened for issuers with a large percentage of retail holders, who are less likely to provide instructions to brokers, particularly in uncontested elections. Companies may need to increase their solicitation efforts to reach non-responding shareholders, which is likely to increase the costs of uncontested elections. In addition, for companies that have adopted majority voting, the proposed rule change may increase the influence of special interests on such elections.

Because the proposal would apply to all brokers that are members of the NYSE, it would affect each public company regardless of where the company’s stock is traded. If approved by the SEC, the proposed amendment would be effective, at the earliest, for the 2010 proxy season. At least three of the five SEC commissioners have stated publicly that they support the change, which was first proposed in 2006.

For the full text of the proposed rule change, click [here](#).

If you have any questions about the proposed amendment, please do not hesitate to contact your regular Ropes & Gray attorney.