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April 24, 2009

The Honorable Mary L. Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

VIA ELECTRONIC MAIL

Subject: Proposed Amendment to New York Stock Exchange Rule 452, File Number SR-NYSE-2006-92

Dear Chairman Schapiro:

The Shareholder Communications Coalition (“Coalition”)<sup>1</sup> wishes to bring to your attention an issue raised by an article published in the Wall Street Journal on April 24, 2009, entitled “SEC Plans to End Broker Vote Rule, in Win for Activists.” See Attachment A.

The article states that: “The issue [of amending Rule 452 to eliminate broker discretionary voting in uncontested director elections] was delegated to the SEC staff to approve and won’t require the five commissioners to weigh in.” The Coalition does not know whether or not the Securities and Exchange Commission (the “Commission”) has in fact delegated authority to the Commission staff to consider the proposed amendment to Rule 452. However, we believe that any such delegation of authority would be inappropriate in view of the important policy issues raised in the comment letters on the proposed changes to Rule 452.

The policy issues raised in the comment letters include the need to educate shareholders about the proxy voting system so they are not disenfranchised by the proposed rule changes, the need to review the Commission’s shareholder communication rules so that issuers can more effectively communicate with their beneficial owners, and a myriad of other issues relating to proxy voting and shareholder communications.

Accordingly, the Coalition believes that full Commission consideration of the proposed amendment to Rule 452 at a public meeting is warranted.

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<sup>1</sup>The Shareholder Communications Coalition currently comprises: the Business Roundtable, the National Association of Corporate Directors, the National Investor Relations Institute, the Securities Transfer Association, and the Society of Corporate Secretaries & Governance Professionals.



Business Roundtable



SOCIETY OF CORPORATE SECRETARIES  
& GOVERNANCE PROFESSIONALS



THE SECURITIES TRANSFER  
ASSOCIATION, INC.

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Please feel free to call on the Coalition or any of its members if we may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, stylized 'N' and 'H'.

Niels Holch  
Executive Director  
Shareholder Communications Coalition

Attachment

cc: The Honorable Kathleen Casey  
The Honorable Elisse Walter  
The Honorable Luis Aguilar  
The Honorable Troy Paredes  
David Becker  
Erik Sirri  
Shelley Parratt

All Things Digital   Tech and Media News		
Walter S. Mossberg	Computer Buyers Have to Consider System Upgrades	04.23 - 5:02 pm PT
Peter Kafka	Did Apple Just Fire 1,000 Retail Workers? Nope.	04.24 - 11:21 am PT
Kara Swisher	Project Playlist Names Former MTV Exec Sykes as CEO. ...	04.24 - 8:00 am PT

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ATTACHMENT A

APRIL 24, 2009

## SEC Plans to End Broker Vote Rule, in Win for Activists

By KARA SCANNELL and DAN FITZPATRICK

*See Corrections & Amplifications below*

In a major win for activist investors, the Securities and Exchange Commission plans to toss out decades-old rules in a move that will give activists significantly more power to determine who sits on corporate boards.

The rule change centers on a technical issue: Whether brokers are allowed to vote on their clients' behalf in director elections. Since 1937, the brokers have been able to vote their clients' shares, and have typically voted in favor of standing managements and boards.

But starting in January, the SEC will change those standards, say people familiar with the matter. The SEC is expected to announce the rule change as early as next week, these people say. Brokers won't be able to vote their clients' shares. Since many small shareholders simply don't vote, that will give more power to institutional and activist shareholders who do.

The change has long been sought by large shareholders and activists who want to make it easier to dump underperforming boards. They have been stymied, however, by the "broker vote" standards, which diluted their influence.

Investors such as Carl Icahn have long used proxy fights to put pressure on companies and their managements. By eliminating broker votes, they will have an easier time at winning the voting majority necessary to throw out board members. The changes will be most acute at companies with large mom-and-pop shareholder bases. The rule change won't apply to instances where an activist runs a competing slate of directors.

This month's fight over the fate of Bank of America Corp. Chief Executive and Chairman Kenneth Lewis provides a test case for how the changes might affect a board election. In standing for election, Mr. Lewis faces opposition from several large investors, including teachers pension fund TIAA-CREF. A separate proposal would require the bank to split the chairman and CEO roles, effectively stripping Mr. Lewis of at least one of his titles.

Change to Win, a coalition of labor unions opposed to Mr. Lewis' re-election, predicts that 22% of votes scheduled to be cast at the bank's shareholders meeting will be "broker votes," based on trends established during the prior two years. If Mr. Lewis wins just over a third of the remaining votes at the meeting, he would be re-elected, according to the group's analysis.

"Ken Lewis and other directors may only be elected as a result of the broker vote," said Michael Garland, director of value strategies at Change to Win's investment arm.

Mr. Lewis has defended his performance and told board members he intends to remain as CEO at least until the financial crisis is over. The bank has said it doesn't believe a split of the top roles is the right move. It declined to comment for this article.

The move is the first of what is expected to be a series of changes under way at the SEC. The broker vote change was first proposed in 2006, but it languished under the previous SEC chief and was never finalized.

Reviving the broker vote proposal was one of SEC Chairman Mary Schapiro's first moves since taking the helm in January. The issue was delegated to the SEC staff to approve and won't require the five commissioners to weigh in. The SEC is expected to take up other issues to expand shareholders' rights next month.

Several companies, including General Electric Co., Pfizer Inc., J.P. Morgan Chase & Co. and Exxon Mobil Corp., recently wrote letters to the SEC urging the agency to hold off on eliminating the broker vote rule change until the agency undertakes a broader review of proxy rules.

Some companies say eliminating broker votes will make it harder to establish a quorum at shareholder meetings and require costly efforts to encourage voter turnout. Investors call that a red herring.

Under current rules, investors must instruct their brokers on how to vote at least 10 days before the election.

If there are no instructions, brokers are entitled to vote however they wish on "routine" items. Generally brokers vote for management, on the theory that any shareholder who opposed the company's position would give instructions. In the U.S., about 80% of investors' stocks are held at brokerage accounts.

Until now, uncontested director elections have been considered "routine." The SEC rule change is expected to say that such elections are no longer routine items and brokers can't vote the stock either way without shareholder instructions.

"This is a huge victory for the investor community," said Ann Yerger, executive director of the Council for Institutional Investors, a Washington organization that represents pension funds holding \$3 trillion in assets.

**Write to** Kara Scannell at [kara.scannell@wsj.com](mailto:kara.scannell@wsj.com) and Dan Fitzpatrick at [dan.fitzpatrick@wsj.com](mailto:dan.fitzpatrick@wsj.com)

#### **Corrections & Amplifications**

Planned rule changes by the Securities and Exchange Commission to stop allowing brokers to vote clients' shares in board elections will apply to uncontested elections. The changes won't affect instances where an activist runs a competing slate of directors, in which such votes are already prohibited. A previous version of this article incorrectly said they will end a practice of allowing brokers to vote on clients' behalf in contested elections.

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