

Rule 452. Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting member organization holdings as executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 451 [¶2451], and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to voted such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

Instructions on stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 451(b)(1) [¶2451], shall

- (1) Forward to the second member organization any voting instructions received from the beneficial owner, or
- (2) if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 451 [¶2451] and no instructions have been received by the date specified in the statement

accompanying such material, notify the second member organization of such fact in order that such member organization may give the proxy as provided in the third paragraph of this rule.

Signed proxies for stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 451(b)(2) [¶2451], shall obtain the requisite number of signed proxies from such holder of record.

Amendments.

January 11, 1968.

August 25, 1994.

March 6, 2003 (NYSE-2002-50).

• • • **Supplementary Material:** -----

Giving a Proxy To Vote Stock

.10When member organization may vote without customer instructions.— Rule 452, above, provides that a member organization may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or to the beneficial owner's designated investment adviser in accordance with Rule 451 [¶2451], and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

Amendments.

January 11, 1968.

August 25, 1994.

.11When member organization may not vote without customer

instructions.—In the list of meetings of stockholders appearing in the Weekly Bulletin, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the Securities and Exchange Commission;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (i.e., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal);

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by subsection 8 of Section 303A of the Exchange's Listed Company Manual);

(13) authorizes

- a. a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or
- b. the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

- a. retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and
- b. any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

Amendment.

January 11, 1968.

June 30, 2003 (NYSE-2002-46).

.12 Proportionate voting for auction rate preferred securities.—

Notwithstanding any other provision of Rule 452, a member organization may vote auction rate preferred securities^{*} with auction reset periods of one year or less in proportion to the voting instructions received from holders of the same class (or of the same series where the item must be voted upon separately by each series), in accordance with the provisions established below:

- (1) It has transmitted proxy soliciting material to the beneficial owner of the auction rate preferred securities or to the beneficial owner's designated investment adviser in accordance with Rule 451 [¶2451], and
- (2) It has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and
- (3) A minimum of 30% of the outstanding shares of the same class or series (where a series vote may be required) has been voted by preferred security holders, and
- (4) Less than 10% of the outstanding shares of the same class or series (where a series vote may be required) voted against the proposal, and
- (5) For any proposal as to which both the common and preferred holders vote as a single class. Proportional voting will not be allowed unless common shareholders approve the proposal, and
- (6) A majority of the independent directors of the issuer's board of directors approved the matter, and
- (7) Adequate disclosure of proportional voting has been provided to beneficial holders.

.13 Discretionary and non-discretionary proposals in one proxy form.—In some cases, a proxy form may contain proposals, some of which may be acted upon at the discretion of the member organization in the absence of instructions, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the member organization may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.

.14 Cancellation of discretionary proxy where counter-solicitation develops.—Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a "contest," the question as to whether or not the discretionary proxy should then be

cancelled is a matter which each member organization must decide for itself. After a contest has developed no further proxies should be given except at the direction of beneficial owners.

.15 Subsequent proxy.—Where a member organization gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for or in revocation of any prior proxy.

.16 Signing and dating a proxy—designating shares covered.—All proxies should be dated and should show the number of shares voted. Since manual signatures are sometimes illegible, a member organization should also either type or rubber-stamp its name on such proxy.

.17 Proxy records.—Records covering the solicitation of proxies shall show the following:

(1) The date of receipt of the proxy material from the issuer or other person soliciting the proxies;

(2) names of customers to whom the material is sent together with date of mailing;

(3) all voting instructions showing whether verbal or written; and

(4) a summary of all proxies voted by the member organization clearly setting forth total shares voted for or against or not voted for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the member organization. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization or their agent.

.20 Retention of records.—All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.

Amendments.

July 31, 1995.

March 22, 1996.