



Rule 452 and Other SEC Rulings

What IROs Need to Know for the 2010 Proxy Season

Tuesday, December 8th, 2009

Agenda



- 1- Rule 452
 - 2- Proxy Access
 - 3- Current legislative proposals
 - Shareholders Bill of Rights Act of 2009
 - Excessive Pay Capped Deduction Act
 - Shareholder Empowerment Act
 - Investor Protection Act
 - 4- Proposed changes to Notice & Access rules
 - 5- Proxy disclosure rules proposed by the SEC
 - 6- Vote Patterns
 - 7- Preparing for the 2010 proxy season and beyond
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How the panel will work



- Each panelist will take a lead on two subjects
 - Other panelists will make comments on the subject
 - Questions will be accepted throughout discussion
 - Session assistant will accept written questions throughout discussion
 - We will try to keep each subject to 8 minutes leaving time for further Q&A at the end
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Introduction



Panelists

- David Drake – Georgeson
 - President
- Fred Marquardt – Morrow & Co., LLC
 - Managing Director
- Don Kittell – Broadridge
 - Managing Director, Regulatory Affairs

Moderator

- Steve Nutt - Broadridge
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Rule 452



- For all meetings taking place after January 1, 2010, brokers will not be allowed to vote uninstructed shares on the election of directors
 - Ways to maintain quorum in the face of 452
 - Impact will vary depending on size of retail ownership
 - Plurality voting vs majority voting
 - Effect of advisory firm recommendations on directors
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Proxy Access



- In June 2009, the SEC published a proxy access rule proposal to facilitate shareholder director nominations using a company's own proxy statement and ballot.
 - Purpose is to create a level playing field for shareholders seeking to nominate directors.
 - SEC purposely proposed limited use of proxy access to deter abuse by short-term investors, corporate raiders.
 - Minimum ownership requirement (1% to 5%) based on net assets.
 - Minimum holding period of one year prior to nomination and intent to hold through meeting date.
 - Grouping of shareholders permitted subject to Regulation 13D.
 - 120-day advance notice.
 - Limit of 25% of board seats available, purpose cannot be control or sale of company.
 - Slate voting not permitted. Each nominee must be voted separately.
 - Private ordering. Companies may be permitted to adopt their own form of Proxy Access subject to shareholder approval.
 - Not expected for implementation until second half of 2010 at the earliest.
 - Hedge funds generally not interested. Public pension funds actively seeking candidate pool.
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Current Legislative Proposals



- Restoring American Financial Stability Act
 - Sen Chris Dodd (D-CT) 11/10/09
 - Corporate and Financial Institution Compensation Fairness Act
 - Rep Barney Frank (D-MA) 7/31/09
 - Shareholder Empowerment Act
 - Rep Gary Peters (D-MI) 6/12/09
 - Shareholder Bill of Rights Act
 - Sen Charles Schumer (D-NY) 5/19/09
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Current Legislative Proposals (cont)

- Excessive Pay Shareholder Approval Act
 - And Capped Deduction Act
 - Sen Richard Durbin (D-ILL) 5/7/09
 - Compensation Fairness Act
 - Sen Max Baucus (D-MON) 3/23/09
 - Taxpayer Protection Act
 - Sen Byron Dorgan (D-SD) 1/9/09
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Current Legislative Proposals (cont)

- Majority Voting
 - Proxy Access
 - Declassified Boards
 - Leadership Structure Disclosure
 - Say-On-Pay
 - Compensation Limits
 - Compensation Committee
 - Risk Committee
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Proposed Changes to Notice & Access rules

- SEC concerned with drop in retail voting due to Notice & Access
 - May allow additional enclosure to “better educate shareholders about N&A
 - Considering changing timing of N&A from 40 days to 30 days
 - No recommendations or voting suggestions allowed on additional enclosure
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Proxy Disclosure Rules proposed by the SEC

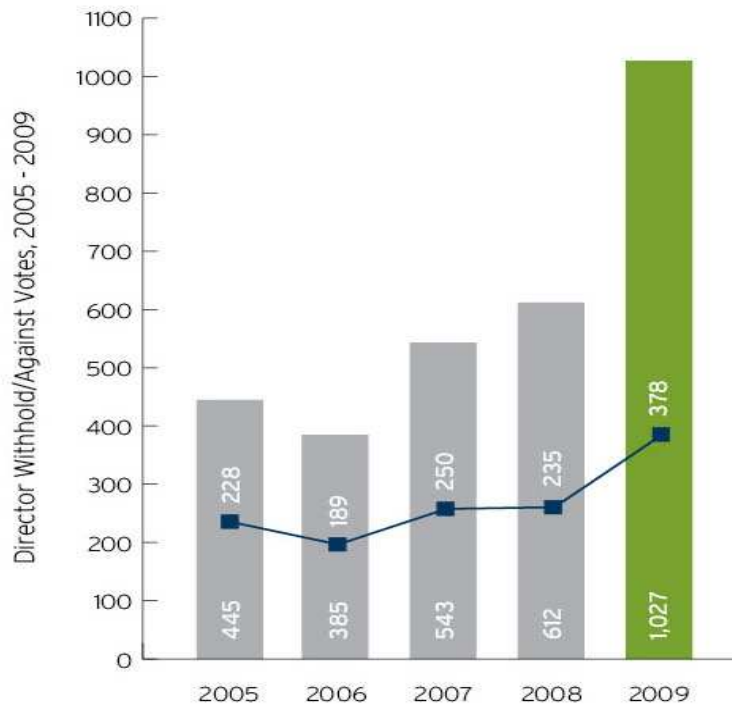


- Compensation Policies and Consultants
- Risk Management
- Director Qualifications
- Leadership Structure
- Reporting of Voting Results

Released July 09/Comments September 09
Anticipate Effective 2010 Proxy Season

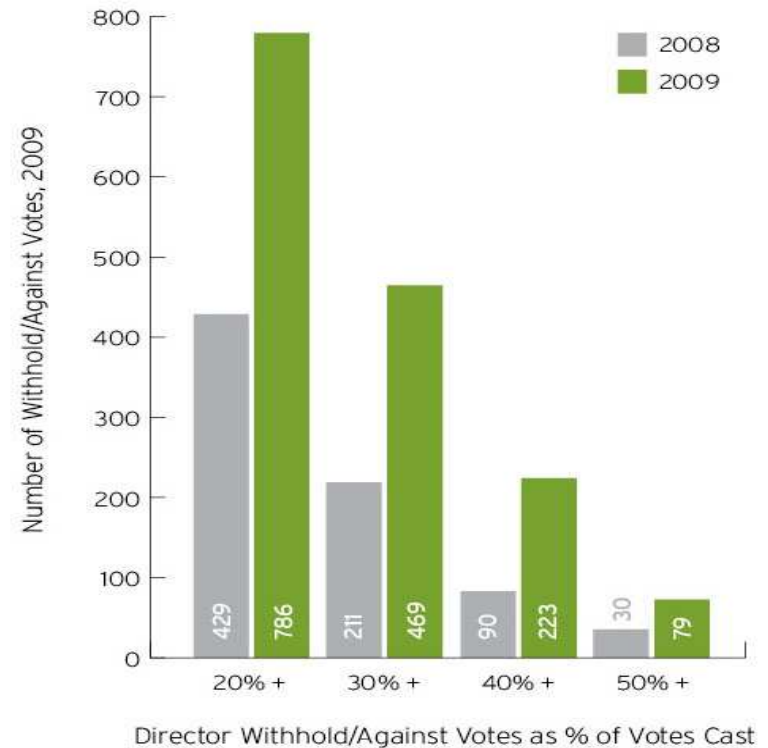
Voting Patterns

Opposition to Corporate Director in Uncontested Elections



S&P 1500 Withhold/Against Votes – 15% or Greater

2009: 1,027 directors at 378 companies
 2008: 612 directors at 253 companies
 2007: 543 directors at 250 companies
 2006: 385 directors at 189 companies
 2005: 445 directors at 228 companies



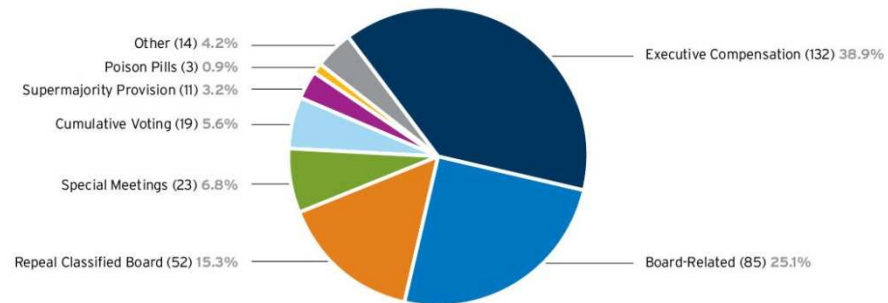
S&P 1500 Director Withhold/Against Votes

786 directors had withhold/against votes of 20% or greater
 469 directors had withhold/against votes of 30% or greater
 223 directors had withhold/against votes of 40% or greater
 79 directors had withhold/against votes of 50% or greater

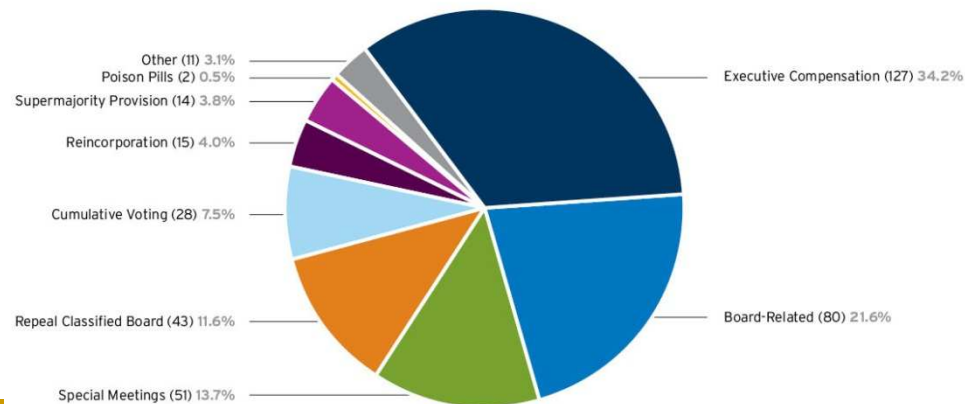
Voting Patterns

Compensation Emerges As Key Governance Issue

2008



2009



Voting Patterns

Voting Trends on Key Issues

Proposal Type	Results Available	Votes as Percent of Shares Outstanding				Votes as Percent of Cast		
		For	Against	Abstain	Non Vote	For	Against	Abstain
Executive Compensation	127 of 127	26%	43%	2%	13%	37%	60%	3%
> Advisory Vote On Executive Compensation	66 of 66	31%	37%	4%	13%	44%	51%	5%
> Approve Or Limit Executive Death Benefits	12 of 12	29%	47%	1%	10%	38%	60%	2%
> Require Equity To Be Retained	12 of 12	18%	53%	1%	13%	26%	73%	1%
> Disclose Executive Compensation	5 of 5	18%	50%	1%	16%	27%	72%	1%
> Approve/Disclose/Limit Supplemental Retirement Plans	5 of 5	23%	49%	1%	12%	32%	67%	1%
> Link Pay To Performance	4 of 4	18%	60%	0%	11%	23%	76%	1%
> Approve/Vote On Future Golden Parachutes	3 of 3	35%	43%	1%	10%	44%	55%	1%
> Award Performance Based Stock Options	3 of 3	13%	65%	1%	10%	17%	82%	1%
> Bonus Deferral Plan	3 of 3	16%	47%	1%	23%	25%	74%	1%
Board-Related	78 of 80	32%	40%	1%	12%	44%	55%	1%
> Majority Vote to Elect Directors	39 of 40	43%	32%	1%	11%	57%	42%	1%
> <i>Have Implemented a Form of Majority Voting</i>	19 of 20	36%	40%	1%	11%	47%	51%	2%
> <i>Have Not Implemented a Form of Majority Voting</i>	20 of 20	49%	24%	1%	12%	66%	33%	1%
> Independent Board Chairman / Separate Chair-CEO	26 of 27	25%	47%	1%	13%	35%	64%	1%
> Independent Lead Director	3 of 3	18%	53%	1%	13%	25%	75%	1%
Shareholder Right to Call Special Meeting	51 of 51	36%	37%	1%	12%	49%	50%	1%
Repeal Classified Board	43 of 43	52%	24%	1%	11%	68%	30%	2%
Cumulative Voting	28 of 28	24%	46%	0%	14%	34%	65%	1%
Reincorporation	14 of 15	5%	71%	1%	11%	7%	93%	1%
Eliminate or Reduce Supermajority Provision	13 of 14	50%	21%	0%	13%	70%	29%	1%
Poison Pills	2 of 2	58%	18%	1%	9%	75%	24%	1%

Preparing for the 2010 proxy season and beyond



- Know your shareholder base
 - Know your discretionary vote
 - Advisory firms
 - Solicitors
 - Stratified mailing
 - Stratified Notice & Access mailing
 - Reminder mailing
 - Technology tools
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Contact Information

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