

## The Quorum Problem for Smaller Companies is Growing

Recently, I was talking to Steve Pantina, who is co-founder and CEO of Proxy Analytics. Steve has been providing his clients with insightful weekly updates on emerging trends from the 2021 proxy season. In one of his recent missives, he described the growing trend of smaller companies having to adjourn their shareholders' meetings in order to solicit additional votes. Steve explained that, from what he can tell, the increase in the frequency of meeting adjournments is likely linked to recent policy changes implemented by some of the larger retail brokerage firms involving discretionary voting. This summarizes some of his high-level points: NYSE Rule 452 provides retail brokers with the right, but not the obligation, to vote discretionarily on behalf of beneficial owners that have not provided specific voting instructions on matters that are deemed routine. Throughout the years, Rule 452 has been heavily criticized and recently some of the largest retail brokerage houses, like Charles Schwab and TD Ameritrade, have amended their practices to no longer issue discretionary votes. For most companies, the change has had minimal impact because institutional investors control such a large percentage of shares. However, the policy change has clearly had a disproportionate impact on smaller companies with fewer institutional investors. In recent weeks, a number of smaller companies have been forced to adjourn their shareholder meetings in order to solicit additional votes. In some cases, the meeting was adjourned to solicit votes on a particular proposal (mostly on issues like seeking increases to authorized common stock or reverse stock splits, which often require a majority of shares outstanding for approval), while others have been forced to adjourn their meeting just to achieve quorum. In a few cases, meetings had to be adjourned multiple times in order to achieve the desired results and in one case, the company went so far as to include the mail and cell phone number of the CEO and CFO for shareholders to call with questions. These issues are not inconsequential. For all of its potential faults, NYSE Rule 452 was put in place to help alleviate many of the concerns described above. If the current trends continue, smaller companies will need to spend more time in their planning phase to ensure that there is sufficient vote support on key voting items. Of course, most options for expanded solicitation efforts will come at additional cost. However, most companies will ultimately save valuable time and resources by making the most of their initial solicitation window instead of scrambling to solicit more votes in a compressed time frame following an adjournment.

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