

# Present But Not Accounted For: NYSE Amends Treatment Of Abstentions In Certain Shareholder Votes

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## Summary

The SEC recently approved an [amendment](#) to [Section 312.07 of the NYSE Listed Company Manual](#) which eliminates the requirement that listed companies include abstentions as “votes cast” in matters on which the NYSE requires shareholder approval. Under the revised Section 312.07, NYSE-listed companies must now tabulate abstentions in accordance with their governing documents and applicable state law.

## Background

Prior to the amendment, the NYSE typically advised listed companies that abstentions were to be considered votes cast. Under that approach, when approval of a proposal required that the votes cast in favor of the proposal exceed the aggregate of the votes cast against, abstentions were effectively treated as “against” votes. The NYSE, however, found that its prior treatment of abstentions caused confusion because the corporate laws of many states, including Delaware, either provide for, or allow companies to provide in their governing documents that, abstentions do not count as votes cast, meaning a proposal succeeds if the votes “for” exceed the votes cast “against.” By requiring listed companies to calculate votes in accordance with their governing documents and applicable state law, the NYSE is seeking to eliminate confusion arising from the application of different voting standards to abstentions. Moreover, the rule change will also result in the NYSE being consistent with Nasdaq in its treatment of abstentions.

## Practical Effect

Notably, the amendment will impact shareholder votes regarding matters such as:

- equity compensation plans and material revisions to those plans;
- certain issuances of common stock and securities convertible into common stock to related parties;

- certain non-public issuances of common stock and securities convertible into common stock exceeding 20% of total voting power or common stock outstanding pre-issuance; and
- issuances leading to a change of control of the listed company.

The amended rule does not affect any votes required by state law.

As a result of the amendment and with proxy season looming, listed companies should carefully review:

- the voting standards set forth in their governing documents;
- the voting standards that are mandated under applicable state law; and
- the description of the voting standards included in their proxy statements to confirm that they describe the voting standards consistent with their governing documents and applicable state law.

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