

Listed Company Manual

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402.00 Proxies

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402.06 Exchange Proxy Rules for Member Organizations (General)

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The term "state" as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

(A) Rule 450—Restriction on Giving of Proxies

No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of rule 452 (Para. 2452), unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) Any person registered as an investment adviser, *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 to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

(A) Rule 451—Transmission of Proxy Material

(a) Whenever a person soliciting proxies shall furnish a member organization:

(1) Copies of all soliciting material which such person is sending to registered holders, and

(2) Satisfactory assurance that [he] *the person* will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation, such member organization shall transmit to each beneficial owner of

stock which is in its possession or control 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, the material furnished; and

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(D) 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 holding 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 of 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, 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 vote 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.

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402.10 Charges by Member Organizations for Distributing Material

The Exchange is engaged in a pilot program covering proxy fees. The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting the proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. Rule 465 states: that, "A member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders, and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated 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 such beneficial owner."

The term "state" as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

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