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February 19, 2016

Proxy Statements under Maryland Law – 2016

The 2016 proxy season is fast approaching. Based on our prior experience reviewing proxy statements for Maryland public companies, we would like to call your attention to certain matters of Maryland law about which we often receive questions. As in the past, we are available to review draft proxy statements for Maryland law compliance. Because the same principles generally apply to both corporations formed under the Maryland General Corporation Law (the "MGCL") and to real estate investment trusts formed under the Maryland REIT Law (the "MRL"), we generally refer hereafter only to corporations.

Virtual Stockholder Meetings. The MGCL expressly authorizes the board of directors, if it is otherwise authorized to determine the place of a meeting of stockholders, to determine that the meeting will be held solely by means of remote communication. A virtual meeting is subject to certain notice and procedural requirements set forth in the statute. The MGCL also requires that the board of directors provide a "place" for a meeting of the stockholders if requested by a stockholder, which means only that the corporation must provide a physical location for the requesting stockholders to access the meeting on the internet. It does not require the board of directors to transform the meeting into a traditional stockholders meeting held at a single location or to update the notice of the meeting. The MRL does not contain a counterpart to the MGCL provision on shareholder meetings by remote communication and simply requires that the declaration of trust provide for an annual meeting of shareholders "at a convenient location." We believe that a real estate investment trust could provide for a virtual shareholders meeting in the declaration of trust or bylaws and that it would be prudent to have those provisions generally mirror those in the MGCL.

Internet Availability of Proxy Materials. Pursuant to Regulation 14A (the "Proxy Rules") of the Securities and Exchange Commission ("SEC"), all filers are required to post their proxy materials on a publicly accessible internet website (other than EDGAR) and may choose to (a) utilize the "notice and access" model for furnishing proxy materials to shareholders by sending a notice of internet availability complying with the Proxy Rules (the "Proxy Rule Notice") or (b) deliver a full set of paper copies of the proxy materials, including the Proxy Rule Notice. A Maryland corporation may combine the notice of a meeting of stockholders that is required by the MGCL with the Proxy Rule Notice.

Householding. Proxy Rule 14a-3(e) provides that an annual report, proxy statement or Proxy Rule Notice will be considered to have been delivered to all shareholders of record who share an address so long as one annual report, proxy statement or Proxy Rule Notice, as applicable, is delivered to the shared address and is addressed (a) to the shareholders as a group, (b) to each of the shareholders individually or (c) to the shareholders in a form to which each of them has consented in writing. The Proxy Rules also require compliance with certain other conditions regarding express or implied consents by shareholders.

Although the MGCL does not address delivery of annual reports or proxy statements, it does address the manner in which a corporation may give notice of a meeting of stockholders by providing for four types of notice: personal delivery, leaving the notice at the stockholder's residence or place of business, mailing to the stockholder at the stockholder's address as shown on the records of the corporation and electronic transmission.

Under the MGCL, a single notice is effective as to all stockholders who share an address unless the corporation receives a written or electronic request from a stockholder at such address that a single notice not be given. In lieu of householding, we believe that the only means of delivery permissible under the MGCL is addressing the material to each stockholder "individually" at the shared physical or electronic address. The corporation may deliver these materials in one package if it lists the name of each stockholder-recipient on the label containing the shared address. Additionally, the corporation must include a separate proxy card for each individual stockholder at the shared address. The MRL does not state the permissible methods of delivery of notice to the shareholders and this is customarily addressed by provision in the declaration of trust or bylaws.

Proxy Access. Proxy Rule 14a-8 requires a company to include in its proxy materials, under certain circumstances, shareholder proposals recommending the adoption of a procedure in the company's governing documents for including shareholder nominees for director in the company's proxy materials ("proxy access").

Under the MGCL, the board may be given exclusive power over amendments to the bylaws and the bylaws of most of our Maryland public company clients so provide. Thus, stockholders of these companies are not able to amend the bylaws directly for any purpose and so any stockholder proposal to change the bylaws must be precatory. We continue to reiterate our advice of many years that Maryland law specifically recognizes the right of directors to refuse to take any action recommended by the stockholders, even if recommended by the holders of a substantial majority of the shares.

The New York City Comptroller, as part of his "Boardroom Accountability Project," has been writing to companies in the portfolios of the pension funds that he oversees to urge them to adopt proxy access and some companies have begun to do so. The Comptroller is promoting his Project as "a national campaign to give shareowners a true voice in how corporate boards are elected at every U.S. company. * * * The ability to nominate directors is a fundamental shareowner right and the starting point for this transformation." The Comptroller says that he selected the recipients of his letters on the basis of investor concerns over excessive CEO compensation, lack of board diversity or perceived failure to address climate change.

We have advised some companies in adopting proxy access. It is not clear whether proxy access will become mainstream. It is clear, however, that there are several variables to consider in adopting proxy access and that its machinery is not simple. We urge caution in the substantive decision and its implementation.

Advisory Vote on Executive Compensation. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and rules adopted by the SEC, an issuer for which the SEC requires compensation disclosure under the Proxy Rules and Item 402 of Regulation S-K is generally required to include a shareholder advisory vote on executive compensation ("say-on-pay") in the annual meeting proxy statement at least every three years. Additionally, at least every six years, shareholders must be given the opportunity to hold an advisory vote on the frequency of the executive compensation advisory vote, selecting among choices of every one, two or three years or abstain. Almost all public companies submit say-on-pay votes to their shareholders annually. Companies that were first subject to the say-on-pay requirements when they became operative for shareholder meetings in 2011 will be required to include an advisory vote on the frequency of the say-on-pay vote for consideration at the 2017 annual meeting of shareholders.

Executive compensation advisory votes have no effect on a director's or trustee's duties under Maryland law with respect to compensation decisions. Section 14A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provides that shareholder advisory votes are not binding on the issuer and, among other things, may not be construed "[t]o create or imply any change to the fiduciary duties of such issuer or board of directors [or] . . . to create or imply any additional fiduciary duties for such issuer or board of directors."

Ratification of Auditors. Although quite common, ratification of the board's appointment of auditors is, of course, generally not required under federal or Maryland law. Importantly, as ratification of auditors is a routine matter under the New York Stock Exchange ("NYSE") rules, brokers are entitled to vote on it without instructions from their beneficial owners. Thus, if there is no other routine matter on the proxy card, inclusion of ratification of auditors on the card may assist in obtaining a quorum for the meeting.

Board Structure and Director Nominations. Item 7 of Schedule 14A of the Proxy Rules ("Schedule 14A") sets forth various requirements with respect to disclosure regarding the composition of the board and the director nomination process. Of particular note are the requirements that the proxy statement include (a) a discussion of the "specific experience, qualifications, attributes or skills" that led to the conclusion that the nominee or incumbent director should serve as a director; (b) a discussion of the leadership structure of the board, including, among other things, disclosure of why the board has determined that its leadership structure is appropriate and the role of the board in risk oversight; (c) the role of compensation consultants and any potential conflicts of interest; and (d) whether the board or nominating committee considers diversity in identifying board nominees, whether the board or nominating committee has a diversity policy and, if so, how it is implemented and its effectiveness assessed. Regarding the foregoing, there are three important issues under Maryland law:

First, (a) any policy and/or procedures relating to the consideration of shareholder-recommended candidates for director and (b) any specific minimum qualifications for recommendation by the nominating committee for election as a director should be drafted, adopted, disclosed and applied in full coordination with any existing provisions in the charter or bylaws relating to substantive qualifications for election (*e.g.*, minimum or maximum age or ownership of

company stock) and procedures for nomination (*e.g.*, advance notice to the company) and with any corporate governance guidelines. With the proliferation of policies, processes, committee charters, guidelines and principles – in addition to already existing corporate charters and bylaws – it is important that the provisions of all these documents not conflict in either letter or spirit. This also applies to other requirements and duties such as those involving composition of the audit and compensation committees.

Second, the MGCL permits a director "to rely on any information, opinion, report, or statement . . . prepared or presented by" an officer, employee, lawyer, accountant, other expert or board committee on which the director does not serve if the director reasonably believes (a) the officer or employee to be reliable and competent, (b) the expert to be acting within her or his professional or expert competence or (c) the committee to merit confidence, as the case may be. This right to rely applies not only to determinations of independence and other matters relating to director nominations but also to any other determination that a director must make. Thus, the availability and presentation of information and advice can be an important element in a director's substantive performance and in protecting him or her from liability. However, directors should guard against over-reliance, especially in the current corporate governance environment. Appropriate reliance can be an important aid to – but is not a substitute for – the proper exercise of business judgment. The MGCL specifically provides that the board's delegation of authority to a committee does not relieve the directors who are not members of the committee of their duties under the MGCL.

Finally, the additional disclosure requirements, including the need to continuously evaluate the qualifications of all directors for service as directors, highlight the importance of an annual board self-evaluation (required by the NYSE) in which each director actively participates. Although NASDAQ does not have a similar requirement, many NASDAQ companies have adopted board evaluation processes as a matter of good corporate governance. We regularly assist clients in the design and conduct of board evaluations.

Committees. Item 7(d) of Schedule 14A and the rules enacted under the Sarbanes-Oxley Act of 2002 and by the stock exchanges require various disclosures in the proxy statement concerning the audit, compensation and nominating/corporate governance committees, their charters and their members. Item 7(d) currently requires a public company to include these committees' charters as appendices to its annual meeting proxy statement at least every three fiscal years, if the charters are not available to shareholders on the company's website. As a result, most public companies in our experience place these charters on their websites. In addition, Section 303A of the NYSE Listed Company Manual (the "Listed Company Manual") requires the charters of the audit, nominating and compensation committees, the corporate governance guidelines and the code of business conduct and ethics to be posted on the company's website.

All committee reports included in the proxy statement should have actually been reviewed and signed by each member of the committee and submitted to the board and made a part of the board and committee records. Although not required, a committee may want to consider

dating these reports. Most importantly, each committee report should be carefully reviewed to confirm that the committee actually did what the report says was done.

Indemnification/Advance of Expenses in Derivative Suits. The MGCL requires any Maryland corporation to report in writing to its stockholders, prior to, or with the notice of, the next meeting of stockholders, any indemnification of or advance of expenses to a director or officer in a suit by or on behalf of the corporation.

Quorum and Presence at the Meeting. The MGCL provides that, unless the charter provides otherwise, the presence, in person or by proxy, of the holders of shares entitled to cast a majority of all the votes entitled to be cast is necessary to constitute a quorum at a meeting of stockholders. In the absence of a contrary charter provision, the MGCL permits the bylaws of a registered open-end investment company and a corporation having a class of equity securities registered under the Exchange Act and at least three independent directors to lower the quorum requirement to not less than one-third of the votes entitled to be cast at the meeting. A stockholder who is physically present at a meeting (including a stockholder who signs in and later leaves) should be counted as "present" for purposes of determining the existence of a quorum, whether or not the stockholder votes. The same rule applies to a stockholder who is "present . . . by proxy . . . ." That is, if a stockholder returns a properly executed proxy or otherwise authorizes a proxy (and the proxy holder attends the meeting or properly submits the proxy), he or she should be counted as present "by proxy," whether he or she votes on all matters, only some matters or no matters at all or affirmatively checks the box marked "withhold authority" as to directors or "abstain" as to one or more other matters.

Voting Requirements and Abstentions and Broker "Non-Votes". The MGCL addresses quorum and voting requirements at meetings of stockholders but, like most corporation statutes, does not deal specifically with the issue of abstentions and broker non-votes.

Voting Requirements. With three limited exceptions – special voting requirements for certain business combinations with "interested stockholders," approval of voting rights for control shares acquired in a control share acquisition and separate class voting – there are four different statutory levels of vote requirements in the MGCL, depending on the matter for which the vote is taken:

(a) Election of directors – Plurality of all the votes cast at a meeting at which a quorum is present. No counterpart in the MRL.

(b) Removal of a director – Majority of all the votes entitled to be cast for the election of directors (unless the corporation has elected to be subject to an alternative provision). The MRL contains a counterpart.

(c) Charter amendment; merger; transfer of all or substantially all of the assets; consolidation; share exchange; conversion; and dissolution – Two-thirds of all the votes entitled to be cast on the matter. The MRL contains a counterpart for amendment of

declaration of trust, merger and conversion, but there are no MRL provisions governing the transfer of assets, consolidation, share exchange or dissolution.

(d) All other matters – Majority of all the votes cast at a meeting at which a quorum is present. No counterpart in the MRL.

In each of the foregoing situations, the vote required may be altered by provision in the charter or, in the case of the plurality vote requirement for the election of directors, in the bylaws as well. In the absence of a counterpart provision in the MRL, the provisions of the declaration of trust or the bylaws will determine the vote required. Furthermore, the board may choose to submit a proposal to the shareholders conditioned on approval (a) by a percentage greater than that required by the MGCL or the MRL or (b) by some group of shareholders, such as a "majority-of-the-minority provision" in connection with a merger with a controlling shareholder. In addition, other laws or rules may impose different vote requirements. For example, Section 312.03 and .07 and Section 303A.08 of the Listed Company Manual require shareholder approval by the vote described more fully below for equity compensation plans (subject to certain exceptions) and certain issuances of securities. Item 21(a) of Schedule 14A requires the proxy statement to disclose the votes required for the election of directors and for the approval of any other matter (except approval of auditors).

Abstentions. An abstention is always counted as present and entitled to vote because presence and entitlement to vote are necessary to the act of abstaining. With respect to the counting of votes, an abstention is not a vote cast. *Larkin v. Baltimore Bancorp*, 769 F.Supp. 919, 921 n.1 (D. Md.), *aff'd*, 948 F.2d 1281 (4th Cir. 1991). The NYSE, however, takes an unwritten position that abstentions are votes cast with respect to those matters for which shareholder approval is a prerequisite to the listing of shares under Section 312 of the Listed Company Manual.

If the vote required is either a plurality or majority or other percentage of the votes cast, an abstention will have no effect because it will not be a vote cast. If the vote required is a majority, two-thirds or other percentage of all the votes entitled to be cast, the effect of an abstention will be the same as a vote against the proposal because an absolute percentage of affirmative votes is required.

Broker Non-Votes. Many shares of public companies are held in "street" or nominee name in accounts with banks and broker-dealers. These banks and broker-dealers (holding the shares through The Depository Trust Company and its nominee partnership, Cede & Co., the ultimate record owner of the shares) are generally required under the Proxy Rules to provide proxy materials to the beneficial owners and to seek instructions with respect to the voting of those securities. Under Rule 452 of the NYSE, brokers are not permitted to vote without instructions in uncontested director elections.[1] Section 402.08(B) of the Listed Company Manual also lists various

[1] This rule has been in effect since 2009 but does not apply to director elections for investment companies registered under the Investment Company Act of 1940, as amended (the "1940 Act"). Closed-end investment companies that elect to be treated as business development companies under the 1940 Act are not included in this exception.

matters as to which a broker member may not vote or give any proxy without instructions from the beneficial owner. Pursuant to Dodd-Frank, this rule and section were amended to prohibit discretionary voting by brokers on any matter that relates to executive compensation, including the advisory say-on-pay votes mandated by Dodd-Frank. Additionally, in a 2012 memo to members and member organizations, the NYSE indicated that it would no longer treat certain corporate governance proposals, such as proposals to declassify the board, provide for majority voting in director elections or eliminate supermajority voting requirements, as routine matters. Accordingly, there are now very few proposals as to which a broker may exercise discretionary authority.

A broker non-vote is a vote that is not cast on a non-routine matter because the shares entitled to cast the vote are held in street name, the broker lacks discretionary authority to vote the shares and the broker has not received voting instructions from the beneficial owner.[2] If the broker votes on a routine matter but does not vote on a non-routine item on the proxy, then the shares held in street name are present for quorum purposes and the effect of not voting on the non-routine matter depends upon whether the vote requirement for that proposal is based upon a proportion of the votes cast (no effect) or a proportion of the votes entitled to be cast (effect of a vote against).[3] If the only matter at a meeting is non-routine, there should be no broker non-votes, because there is nothing on which the broker is permitted to vote, and shares held in street name for which voting instructions have not been received will be treated identically to shares held by a record holder who does not appear at the meeting in person or by proxy, *i.e.*, as unvoted shares.

Item 21(b) of Schedule 14A requires disclosure only of "the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions." While Item 21(b) does not specifically require disclosure of the effect of abstentions and broker non-votes on determining a quorum, many companies make that disclosure anyway. It should also be noted that Item 5.07 of Form 8-K requires disclosure of the results of each matter voted upon by the shareholders, broken down into the number of votes cast for, against or withheld, as well as the numbers of abstentions and broker non-votes on each matter. If the company initially discloses preliminary voting results, it must file an amended Form 8-K within four business days after the final results are "known."

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[2] Generally, the distribution and collection of voting instruction forms are handled by Broadridge Financial Solutions, Inc., acting on the brokers' behalf pursuant to contract.

[3] An SEC no-action letter issued to the American Bar Association in 1993 takes the position that for Rule 16b-3(d) purposes "broker non-votes should not be considered shares entitled to vote because the broker and proxy holder do not have the authority to vote the shares with regard to the plan." American Bar Ass'n, SEC No-Action Letter, 1993 SEC No-Act. LEXIS 782 (June 24, 1993). A different result might be reached under state corporation law. For example, similar language in the MGCL (*e.g.*, "votes entitled to be cast on the matter," see MGCL §2-604(e) (re charter amendments)) means the total votes to which the total outstanding shares are entitled. *Compare Berlin v. Emerald Partners*, 552 A.2d 482, 491-95 (Del. 1988). We disagree with the SEC's position because broker non-votes are not, to use the SEC's word, "shares" and do not implicate the underlying voting rights to which all shares of that class are entitled under applicable state law and the charter; rather, broker non-votes are the absence of the right of a particular person, the broker, to vote the shares on a particular matter without instruction from the beneficial owner. In other words, the shares remain entitled to vote but one particular holder, the broker, is not entitled to vote them.

Considering the requirements of the federal securities laws, Maryland law and the NYSE, we recommend for Maryland corporations and real estate investment trusts the forms of disclosure set forth on Appendix A hereto, which may be varied appropriately in accordance with the proposal and the applicable vote requirement. The bracketed language on quorums in Appendix A is not required by Item 21(b), but is often disclosed, as noted above.

Proxy Cards. The proxy card is the critical document under state law by which most votes of record are generally authorized to be cast. In this regard, it is important to note that "stockholder" is defined by the MGCL as "a person who is a record holder of shares of stock in a corporation . . . ."[4] Under the MGCL, the proxy must be written and must be signed by the stockholder of record or by the record stockholder's authorized agent. The MGCL provides that signing may be (a) by actual signature by the stockholder or the stockholder's authorized agent or (b) by the stockholder or the stockholder's authorized agent causing the stockholder's signature to be affixed to the writing by any reasonable means, including facsimile signatures. Note that the MGCL does not expressly apply to the voting instruction forms sent by or on behalf of brokers or other intermediaries to obtain voting instructions from beneficial owners holding in street name. A voting instruction is not a proxy under Maryland law and, if certain conditions are met, the solicitation by record holders of voting instructions from beneficial owners is generally exempt from the Proxy Rules pursuant to Rule 14a-2(a)(1).

Among the requirements of Proxy Rule 14a-4(a) and (b), the proxy card must state in boldface type who is soliciting the proxies, list the names of nominees for election as directors and provide an opportunity for the shareholder to withhold authority to vote for individual nominees. Proxy Rule 14a-4(b)(2) also provides that if the proxy card provides a means for the shareholder to vote for all nominees as a group, then it must also provide a means to withhold authority to vote for the group.

Electronic Voting. In recognition of the fact that corporations often hire proxy solicitors and other intermediaries to assist in soliciting proxies, the MGCL permits a stockholder not only to authorize another person to act as a proxy but also to authorize an intermediary, *e.g.*, a proxy solicitor, to authorize another person to act as a proxy. Either of these authorizations may be done "by telegram, cablegram, datagram, electronic mail, or any other electronic or telephonic means." In other words, a stockholder may effectively cast votes by telephone or internet, even though the MGCL does not expressly permit direct voting by telephone or other electronic means.

Deadlines for Shareholder Proposals for Next Annual Meeting. Proxy Rule 14a-5(e) requires the proxy statement to disclose, "under an appropriate caption," (a) the deadline for submitting shareholder proposals for inclusion in the proxy statement and proxy card for the next annual meeting, calculated as provided in Rule 14a-8(e) (Question 5), and (b) the deadline for submitting notice of a shareholder proposal for consideration at the meeting, calculated as provided

[4] There is no corresponding definition of "shareholder" under the MRL. In this memorandum, we have generally used "shareholder" to refer both to a stockholder of a Maryland corporation and a shareholder of a Maryland real estate investment trust, except when referring to a stockholder under a specific provision of the MGCL.

in Proxy Rule 14a-4(c)(1), or under an "advance notice provision, if any, authorized by applicable state law."

(a) *Inclusion in Proxy Statement and Proxy Card.* If the shareholder's proposal is submitted for inclusion in the proxy statement and proxy card for a regularly scheduled annual meeting, then under Proxy Rule 14a-8(e)(2) it must be received by the company at its principal executive office not less than 120 calendar days before the first anniversary of the date of the proxy statement released to shareholders for the prior year's annual meeting (which is interpreted by the SEC as the date that the proxy statement is first sent or given to shareholders).

(b) *Presentation at the Annual Meeting.* A shareholder may opt not to submit a proposal for inclusion in the proxy statement and proxy card but still want to present it at the meeting, or a shareholder may want to nominate an individual for election to the board. If so, the shareholder must comply with any advance notice provision in the charter or bylaws. The MGCL (which expressly applies in this regard to real estate investment trusts under the MRL) authorizes requiring advance notice for stockholder nominations or proposals.

In this regard, we have a well developed form of advance notice bylaw, used by many of our public company clients, containing detailed requirements of the information that must be submitted by a shareholder proponent of director nominees or other business. Advance notice requirements are important in providing the board the necessary time and information to properly consider shareholder nominations and proposals, especially in light of increased shareholder activism. If you have advance notice bylaws that have not been recently reviewed, you may want to consider doing so now so that any amendments may be incorporated in the bylaws (and possibly the 2016 proxy statement) for application to the 2017 annual meeting of shareholders.

Postponement and Adjournment. The MGCL expressly permits postponement of a meeting of stockholders before it is convened and adjournment of a convened meeting to a later date. Typically, a postponement is publicly disclosed not later than the day before the date of the meeting. The notice requirements for postponements and adjournments vary and also depend on the duration of the postponement or adjournment. We believe that the chair of the meeting has broad power to conduct the meeting of stockholders, including recessing and adjourning it, especially if this authority is specifically conferred by the bylaws, as is now customary.

* * * *

As discussed above, it is important that the various elements relating to the governance of the corporation – the charter, the bylaws, the board committee charters and corporate governance guidelines and policies – be consistent with one another. A comprehensive review of these documents should be a part of the preparation for each annual meeting. Additionally, in light of the current environment, the board should review the status of the company's defenses against an unsolicited takeover bid.

Other proxy solicitation issues involving Maryland law also frequently arise. We and our colleagues are available to discuss any questions you may have concerning Maryland law as it applies to your meeting notice, proxy statement and proxy card.

Jim Hanks
Michael Leber

APPENDIX A

PROXY STATEMENTS UNDER MARYLAND LAW – 2016

N.B.: Be sure to check that the statutory vote requirements have not been altered by a provision in the charter, declaration of trust or bylaws.

Election of Directors by Plurality Vote

The vote of a plurality of all of the votes cast at a meeting at which a quorum is present is necessary for the election of a director. For purposes of the election of directors, abstentions and broker non-votes, if any, will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum].

Election of Directors by "Majority Voting"

The vote of a majority of the total of votes cast for a nominee and [votes affirmatively withheld as to *or* votes against] a nominee at a meeting at which a quorum is present is necessary for the election of a director. For purposes of the election of directors, abstentions and broker non-votes, if any, will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum]. [*N.B.: The foregoing disclosure is suggested for the increasingly common "majority voting" requirement in uncontested elections only.*]

Approval of Extraordinary Action

The affirmative vote of two-thirds of all of the votes entitled to be cast on the matter is required for approval of the proposed [charter amendment, merger, etc.]. For purposes of the vote on the proposed [charter amendment, merger, etc.], abstentions and broker non-votes will have the same effect as votes against the proposal[, although they will be considered present for the purpose of determining the presence of a quorum].

Approval of Non-Extraordinary Action

The affirmative vote of a majority of all of the votes cast at a meeting at which a quorum is present is required for approval of [specify proposal]. For purposes of the vote on the [specify proposal], abstentions [and broker non-votes – *N.B.: Include these words only if the vote is on a non-routine matter*] will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum].

Approval of Advisory Vote on the Frequency
of an Advisory Vote on Executive Compensation

The option of one year, two years or three years that receives a majority of all the votes cast at a meeting at which a quorum is present will be the frequency for the advisory vote on executive compensation that has been recommended by shareholders. For purposes of this advisory vote, abstentions and broker non-votes will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum]. In the event that no option receives a majority of the votes cast, we will consider the option that receives the most votes to be the option selected by shareholders. In either case, this vote is advisory and not binding on the Board or the Company in any way, and the Board or the Corporate Governance Committee may determine that it is in the best interests of the Company to hold an advisory vote on executive compensation more or less frequently than the option recommended by our shareholders.

Approval of Transaction under
Section 312.03 of the Listed Company Manual

The affirmative vote of a majority of the votes cast on the proposal at a meeting at which a quorum is present is required for approval of [specify proposal]. For purposes of the vote on [specify proposal], abstentions will have the same effect as votes against the proposal and broker non-votes will not have any effect on the result of the vote. [*N.B.*: *The treatment of abstentions as having the effect of a vote against the proposal is appropriate only if adhering to the unwritten NYSE policy that abstentions are votes cast; an abstention is not a vote cast for Maryland law purposes.*] [Both abstentions and broker non-votes will be considered present for the purpose of determining the presence of a quorum.]

Approval of SEC Rule 16b-3 Plan
(Other than a Discretionary Transaction)

The affirmative vote of the holders of a majority of the shares [or other securities] present (or represented) and entitled to vote at the meeting is required for approval of the proposed [specify name of employee benefit plan or describe specific transaction being submitted pursuant to Rule 16b-3(d)(2)]. For purposes of the vote on the proposed plan, abstentions will have the same effect as votes against the proposed [plan] [transaction] and broker non-votes will not be counted as shares entitled to vote[A] on the matter and will have no effect on

[A] See footnote 3, above.

the result of the vote. [Both abstentions and broker non-votes will be considered present for the purpose of determining the presence of a quorum.]

Approval by a 1940 Act Majority

The approval of the proposal requires the affirmative vote of the holders of a "majority of the outstanding voting securities" of the Fund as defined in [Section 2(a)(42) of] the Investment Company Act of 1940, which means the lesser of (i) 67% or more of the voting securities of the Fund present or represented at the meeting, if the holders of more than 50% of the Fund's outstanding voting securities are present or represented by proxy, or (ii) more than 50% of the outstanding voting securities of the Fund. For purposes of the vote on the proposal, abstentions and broker non-votes will have the effect of votes against the proposal[, although they will be considered present for purposes of determining the presence of a quorum].