

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61046; File No. SR-NYSE-2009-114)

November 20, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Sample Broker Letters Set Forth In Rule 451

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2009, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 of the Exchange’s Listed Company Manual (the “Manual”) to amend the forms of letters contained in those rules to reflect the recent amendments to the Exchange’s broker voting rules.

The text of the proposed rule change is available on the Exchange’s Website (<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended Exchange Rule 452 and Section 402.08 of the Manual to provide that brokers which are record holders of shares held in client accounts will no longer be permitted to vote those shares in the election of directors without instructions from the beneficial holder of those shares.⁴ The amendments take effect for shareholder meetings held on or after January 1, 2010, except to the extent that a meeting was originally scheduled to be held prior to such effective date but was properly adjourned to a date on or after such effective date.⁵

Supplementary Material .20 to Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 contain specimens of letters containing the information and instructions required pursuant to the proxy rules to be given by NYSE member organizations to clients where the member organization is the record holder of shares beneficially owned by those clients in the circumstances where a broker (i) may vote on all proposals without voting instructions (Section 905.01), (ii) may not vote on any proposals without instructions (Section 905.02), and (ii) may

⁴ See Securities Exchange Act Release No. 60215 (July 1, 2009) 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

⁵ The amendment does not affect brokers voting as record holders of shares of companies registered under the Investment Company Act of 1940.

vote on certain but not all proposals without instructions (Section 905.03). These letters are shown as examples and not as prescribed forms. Member organizations are permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

The Exchange is concerned that many shareholders receiving proxy materials from their brokers for meetings scheduled after January 1, 2010 will not be aware of the amendments to the NYSE's broker voting rules and may therefore assume that the broker as record holder will vote their shares on the election of directors if they do not return voting instructions to their broker. The NYSE believes it is important for as many shares as possible to be voted in the election of directors and, therefore, believes it is important to educate retail investors with respect to the implications of their failure to return voting instructions under the amended rules. Consequently, the Exchange proposes to amend the forms of letters provided for use in connection with meetings where the broker may vote on none of the proposals before the meeting and meetings where the broker may vote on some but not all of the proposals before the meeting. The proposed amendments will insert the following language in those forms for use in connection with meetings scheduled after January 1, 2010:

Please note that, under a rule amendment adopted by the New York Stock Exchange for shareholder meetings held on or after January 1, 2010, brokers are no longer allowed to vote shares held in their clients' accounts on uncontested elections of directors unless the client has provided voting instructions (it will continue to be the case that brokers cannot vote their clients' shares in contested director elections).

Consequently, if you want us to vote your shares on your behalf on the election of directors, you must provide voting instructions to us. Voting on matters presented at

shareholders meetings, particularly the election of directors, is the primary method for shareholders to influence the direction taken by a publicly-traded company. We urge you to participate in the election by returning the enclosed voting instruction form to us with instructions as to how to vote your shares in this election.

The Exchange also proposes to amend Supplementary Material .20 to Rule 451 and Sections 905.01, 905.02 and 905.03 of the Manual to correct references in the text which indicate that the broker is sending a “proxy” to its clients. In actuality, these letters are intended for use in circumstances where the broker as record holder is seeking voting instructions from its clients as beneficial holders. The broker then provides a voting proxy to the company, voting according to client instructions to the extent applicable. As such, the broker sends a voting instruction form to its clients, rather than a proxy, and the Exchange is amending the rule text to accurately reflect this fact.

Currently, the letters for use when the broker may not vote on any proposals without instructions and may vote on certain but not all proposals without instructions state that if a client returns a signed voting instruction form without otherwise marking the form, the shares will be voted as recommended by the management on all matters to be considered at the meeting. Rule 14a-4(b)(1) under the Act provides that “a proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case.” In light of this requirement that it be made very clear that the absence of instructions gives the broker discretion as to how the shares are voted, the Exchange proposes to amend the language of the applicable letters to emphasize this fact by clarifying that it is understood that, if the client signs without otherwise marking the form, this will be construed as

instruction to vote the shares as recommended by the management on all matters to be considered at the meeting.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁶ of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments are consistent with the investor protection objectives of the Act in that their sole purpose is to explain to shareholders the implications of failing to provide voting instructions to their brokers, thereby enabling them to make a more informed decision with respect to the exercise of their voting rights.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange has met this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-114 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File

Number SR-NYSE-2009-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).