

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52765; File No. SR-Amex-2005-102)

November 10, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Interpretation of Exchange Rule 577 and Section 723 of the Amex Company Guide

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 October 12, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) 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 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 an Exchange interpretation of Exchange Rule 577 (Giving Proxies by Member Organization) and Section 723 (Giving Proxies by Member Organization) of the Amex Company Guide.³

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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the proposed rule change does not amend the text of Exchange Rule 577 and its Commentary or Section 723 of the Amex Company Guide and its Commentary.

item IV below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 577 provides that a member organization may give a proxy to vote shares registered in its name, notwithstanding the failure of the beneficial owner to instruct the firm how to vote, provided, among other things, that the proposal being voted on does not involve a matter which “may affect substantially the rights or privileges of such stock.”⁴ Commentary .11 to Amex Rule 577 lists, by way of example, 18 “non-routine” actions in respect of which member organizations may not vote uninstructed shares. In addition to those 18 specific actions, the Amex has interpreted Rule 577 to preclude member organizations from voting without instructions in certain other situations, including those involving any material amendment to an investment advisory contract with an investment company. The New York Stock Exchange (“NYSE”) Rule 452 is virtually identical to Amex Rule 577 and has been similarly interpreted.

In the past, where the only change being made to the substantive terms of the investment advisory contract was a change in the identity of the investment adviser, both the Amex and the NYSE interpreted their respective proxy voting provisions to permit member organizations to vote uninstructed shares on the authorization of the new investment company investment advisory contract.⁵ A proposed rule change filed by the NYSE of its interpretation of its rule

⁴ Section 723 of the Amex Company Guide is the same as Amex Rule 577 and this proposed rule interpretation will apply to both Section 723 of the Amex Company Guide and Amex Rule 577.

⁵ In 1992, the NYSE issued a formal interpretation of Rule 452 to, among other things, allow member organizations to give a proxy on the initial approval of an investment advisory contract if the beneficial holder does not exercise his right to vote; however,

governing proxies by member organizations on votes relating to changes to investment advisory contracts recently became effective.⁶ Under the new interpretation, any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser,⁷ which approval is required by the Investment Company Act of 1940, as amended ("1940 Act"),⁸ and the rules thereunder, will be deemed by NYSE to be a "matter which may affect substantially the rights or privileges of such stock" on which a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. This policy means that where the 1940 Act requires shareholder approval of an investment advisory contract due to an assignment of an investment company's investment advisory contract (including an assignment caused by a change in control of the investment adviser that is a party to the assigned contract), a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares.

Following discussions with the staff of the Commission's Division of Investment Management, the Amex has determined to adopt a comparable interpretation of Rule 577 to conform to the NYSE interpretation. Under the proposed interpretation of Amex Rule 577, any proposal to obtain shareholder approval of an investment company's investment advisory

member organizations are precluded from voting without instructions if there is a material amendment to the investment advisory contract. See Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR-NYSE-92-05). Telephone conversation between Steve L. Kuan, Special Counsel, Division of Market Regulation ("Division"), Commission, and Marija Willen, Associate General Counsel, Amex, on October 27, 2005.

⁶ See Securities Exchange Act Release No. 52569 (October 6, 2005), 70 FR 60118 (October 14, 2005) (SR-NYSE-2005-61).

⁷ Telephone conversation between Steve L. Kuan, Special Counsel, Division, Commission, and Marija Willen, Associate General Counsel, Amex, on October 27, 2005.

⁸ 15 U.S.C. 80a-1 et seq.

contract with a new investment adviser,⁹ which approval is required by the 1940 Act, and the rules thereunder, will be deemed to be a “matter which may affect substantially the rights or privileges of such stock” (that is, a “non-routine” matter) on which a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not 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

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

⁹ See note 7 *supra*.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f)(1) of Rule 19b-4 thereunder¹³ as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule. At any time within 60 days of the filing of the 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-102 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(1).

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. 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 available publicly. All submissions should refer to File Number SR-Amex-2005-102 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).