

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62874; File No. SR-NYSE-2010-59)

September 9, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Amend NYSE Rule 452 and Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting on Executive Compensation Matters

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 26, 2010, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange is proposing to amend NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which was signed by the President on July 21, 2010.

The text of the proposed rule change is available at <http://www.nyse.com>, at the Exchange’s principal office, at the Commission’s Public Reference Room, and on the Commission’s website at [www.sec.gov](http://www.sec.gov).

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 changes. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B and C below.

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

1. Purpose

The Exchange is proposing to amend NYSE Rule 452, titled Giving Proxies by Member Organizations, and corresponding NYSE Listed Company Manual Section 402.08, to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with the provisions of Section 957 of the Dodd-Frank Act, which was signed by the President on July 21, 2010. Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule changes pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis. We are also proposing to add the words “or authorize” in certain places throughout the rule to clarify that the rule includes not only the giving of a proxy but also the authorization of such proxy.

Current Requirements of NYSE Rule 452

Under current NYSE and Commission proxy rules, brokers must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day preceding the meeting date, Rule 452 provides that a broker may vote on certain matters when the broker 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 matter which may affect substantially the rights or privileges of such stock. In addition, the Rule currently identifies 20 matters with respect to which brokers may not vote without instructions from beneficial owners.

Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Prior to the July 21, 2010 enactment of the Dodd-Frank Act, under Rule 452 and the Exchange's prior interpretations, member organizations were permitted to cast votes on some matters, including some executive compensation proposals, without specific instructions from beneficial owners of the stock. However, the Dodd-Frank Act contains a provision explicitly requiring the elimination of broker discretionary voting on matters related to executive compensation.

Section 957 of the Dodd-Frank Act amends Section 6(b)<sup>3</sup> of the Exchange Act to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12<sup>4</sup> of the Exchange Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote (i) with respect to the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the "Investment Company Act")), (ii) executive compensation or (iii) any other significant matter, as determined by the Commission, by rule.

---

<sup>3</sup> 15 U.S.C. 78f(b). The Commission notes that Section 957 amends Section 6(b) of the Act by adding Section 6(b)(10).

<sup>4</sup> 15 U.S.C. 78l.

The Exchange prohibits member organizations from voting uninstructed shares if the matter voted on is the election of directors (other than in the case of an issuer registered under the Investment Company Act, provided the matter is not the subject of a counter-solicitation). In addition, the Commission has not at this time identified other significant matters with respect to which the Exchange must prohibit member organizations from voting uninstructed shares. Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to amend NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation.

Specifically, the Exchange is proposing to add a new Item 21 and accompanying commentary to NYSE Rule 452.11 (When member organization may not vote without customer instructions), and corresponding NYSE Listed Company Manual Section 402.08(B) (When Member Organization May Not Vote Without Customer Instructions), to provide that a member organization may not give or authorize a proxy to vote without instructions from the beneficial owner when the matter to be voted upon relates to executive compensation.

The proposed commentary to Item 21 would clarify that a matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which

it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under NYSE Rule 452.11 and corresponding Listed Company Manual Section 402.08. Any vote on these or similar executive compensation-related matters would be subject to the requirements of NYSE Rule 452, as amended, and corresponding NYSE Listed Company Manual Section 402.08, as amended.

#### Effective Date

Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule changes pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis.

#### 2. Statutory Basis

The basis under the Exchange Act for these proposed rule changes is the requirement under Section 6(b)(5)<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. We are adopting these proposed rule changes to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believe the proposed rule changes to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

---

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended by the Dodd-Frank 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 on the proposed rule changes.

III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-59 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-2010-59. 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 website (<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 website viewing and printing 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 NYSE. 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-2010-59 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis. The Exchange stated that it believed good cause existed to grant accelerated approval because Section 957 of the Dodd-Frank Act does not provide for a transition period.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> The Commission believes that the proposal is consistent with Section 6(b)(10)<sup>7</sup> of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for

---

<sup>6</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(10).

uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)<sup>8</sup> of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that “final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.”<sup>9</sup> The proposed rule change will make NYSE rules compliant with the new requirements of Section 6(b)(10) by prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares with respect to any matter on executive compensation.<sup>10</sup>

---

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See S. Rep. No. 111-176, at 136 (2010).

<sup>10</sup> As noted above, Section 6(b)(10) also prohibits broker voting for director elections, except for uncontested director elections of registered investment companies, and also “any other significant matter, as determined by the Commission, by rule.” NYSE already prohibits broker voting in director elections except for uncontested director elections for registered investment companies. See NYSE Rule 452.11(19) and Listed Company Manual Section 402.08(B)(19) and note 11, infra. As to other matters, the Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the NYSE to adopt coordinating rules promptly to comply with the statute.

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.<sup>11</sup>

The Commission notes that the NYSE's new rule prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act, as well as any other matter concerning executive compensation, and has been drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The proposed rule language also specifically states that a broker vote on any executive compensation matter would not be permitted even it would otherwise qualify for an exception from any item under Rule 452.11 or corresponding Listed Company Manual Section 402.08. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

Finally, the Commission notes that the change to reflect that the NYSE rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of the NYSE proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the NYSE's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act by ensuring that brokers, holding shares on

---

<sup>11</sup> As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

behalf of beneficial owners, are not voting uninstructed shares on matters relating to executive compensation, which should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. As noted above, Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform NYSE Rule 452 and Section 402.08 of the Listed Company Manual to the requirements of Section 6(b)(10) of the Act.

---

<sup>12</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSE-2010-59) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).