

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52569; File No. SR-NYSE-2005-61)

October 6, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to an Interpretation of Exchange Rule 452

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 September 2, 2005, the New York Stock Exchange, Inc. (“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 Exchange filed Amendment Nos. 1³ and 2⁴ to the proposed rule change on September 20, 2005 and September 28, 2005, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 452 (Giving Proxies by Member Organizations).⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was intended to replace and supersede the filing in its entirety. However, the Exchange withdrew Amendment No. 1 on September 28, 2005 since the Exchange inadvertently submitted Amendment No. 1 incorrectly under to Rule 19b-4(f)(6), rather than Rule 19b-4(f)(1).

⁴ In Amendment No. 2, the Exchange made non-substantive clarifying changes to reference Sections 402.06 and 402.08 of the Exchange’s Listed Company Manual, in the Purpose section of its filing.

⁵ The Commission notes that the proposed rule change, as amended, does not amend the text of Exchange Rule 452 or its Supplementary Material.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 452 (which is referenced in Sections 402.06 and 402.08 of the Listed Company Manual) 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.” By way of example, Supplementary Material .11 to Rule 452 (which is also referenced in Section 402.08 of the Listed Company Manual) lists 18 actions in respect of which member organizations may not vote uninstructed shares. In addition to those 18 specific actions, the Exchange has interpreted Rule 452 to preclude member organizations from voting without instructions in certain other situations, including any material amendment to the investment advisory contract with an investment company.⁶

For many years, the Exchange interpreted this provision to permit member organizations to vote uninstructed shares on the authorization of new investment company investment advisory

⁶ See Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR-NYSE-92-05).

contracts, where the change in identity of the investment adviser was the only change being made to the substantive terms of the contract.

The Exchange, following discussions with staff from the Commission’s Division of Investment Management, has determined that any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (“1940 Act”),⁷ and the rules thereunder, will be deemed to be a “matter which may affect substantially the rights or privileges of such stock” for purposes of Exchange Rule 452 so that a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company’s investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act⁸ 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 a national market system and, in general, to protect investors and the public interest.

⁷ 15 U.S.C. 80a et seq.

⁸ 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act⁹ and paragraph (f)(1) of Rule 19b-4 thereunder¹⁰ 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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(1).

¹¹ The effective date of the original proposed rule change is September 2, 2005 and the effective date of Amendment No. 2 is September 28, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 28, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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-NYSE-2005-61 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-NYSE-2005-61. 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. 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-NYSE-2005-61 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.¹²

Jonathan G. Katz
Secretary

¹² 17 CFR 200.30-3(a)(12).