

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63855; File No. SR-NYSE-2011-02)

February 7, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Forms of Broker Letters Set Forth in Exchange Rule 451 and Sections 905.02 and 905.03 of the Exchange's Listed Company Manual

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on January 26, 2011, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 Exchange Rule 451 and Sections 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 in relation to executive compensation proposals. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

discussed any comments it received on the proposed rule change. The text of those 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 parts 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 on matters relating to executive compensation.³ This amendment was made in accordance with the requirements of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

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 (iii) may 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

³ See Securities Exchange Act Release No. 62874 (September 9, 2011) 75 FR 56152 (September 15, 2011) (SR-NYSE-2011-59).

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 effectiveness of the amendments to the NYSE broker voting rules in relation to executive compensation proposals will not be aware of those amendments and may therefore assume that the broker as record holder will vote their shares on such proposals 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 on such proposals 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 language in those forms to alert beneficial holders that brokers will no longer be able to vote uninstructed shares on executive compensation matters. To limit the length of the letters, the Exchange proposes to modify language previously added with respect to the fact that brokers could no longer vote uninstructed shares on the election of directors for meetings scheduled after January 1, 2010.⁴ References to the new treatment of executive compensation proposals and director elections will be combined.

⁴ See Securities Exchange Act Release No. 61046 (November 20, 2009), 74 FR 62849 (December 1, 2009) (SR-NYSE-2009-114).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁵ of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 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

No written comments were solicited or received with respect to the proposed rule change.

⁵ 15 U.S.C. 78f(b).

⁶ 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,⁷ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

⁷ The Commission notes that the Exchange has satisfied the five day pre-filing requirement.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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-2011-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2011-02. 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 the 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-2011-02 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

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

Cathy H. Ahn
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).