should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–13 and should be submitted on or before March 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4768 Filed 3–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59464; File No. SR–NYSE–2006–92]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 4, To Amend NYSE Rule 452 and Listed Company Manual Section 402.08 To Eliminate Broker Discretionary Voting for the Election of Directors and Codify Two Previously Published Interpretations That Do Not Permit Broker Discretionary Votes for Material Amendments to Investment Advisory Contracts

February 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2006, the New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. On May 23, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On June 28, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. On February 26, 2009, the Exchange filed and withdrew Amendment No. 3 to the proposed rule change. On February 26, 2009, the Exchange filed Amendment No. 4.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 4, from interested persons.

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

The NYSE is proposing to amend NYSE Rule 452 to eliminate broker discretionary voting for the election of directors. Rule 452, titled *Giving Proxies by Member Organizations*, allows brokers to vote on ''routine'' proposals if the beneficial owner of the stock has not provided specific voting instructions to the broker at least 10 days before a scheduled meeting. The proposed amendment will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, in the event the proposed amendment is not approved by the Commission until after August 31, 2009, the effective date shall be delayed to a date which is at least four months after the approval date, and which does not fall within the first six months of the calendar year. In addition, in any case the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to the effective date but was properly adjourned to date on or after the effective date.[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 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 and is set forth in Sections A, B and C below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

1. Purpose

The NYSE is proposing to amend NYSE Rule 452 to eliminate broker discretionary voting for the election of directors. Rule 452, titled *Giving Proxies by Member Organizations*, allows brokers to vote on ''routine'' proposals if the beneficial owner of the stock has not provided specific voting instructions to the broker at least 10 days before a scheduled meeting. The proposed amendment will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, in the event the proposed amendment is not approved by the Commission until after August, 31, 2009, the effective date shall be delayed to a date which is at least four months after the approval date, and which does not fall within the first six months of the calendar year. In addition, in any case the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to the effective date but was properly adjourned to a date on or after the effective date.

The NYSE originally filed these proposed amendments on October 24, 2006. The first amendment to the rule filing was filed on May 23, 2007. The most significant difference being proposed in that amendment was to provide that the proposed amendment to Rule 452 is not applicable to companies registered under the Investment Company Act of 1940. The second amendment to the rule filing was filed on June 27, 2007 [*sic*].[5] It reflected minor SEC staff comments to Amendment No. 1 and added another non-routine item to the list enumerated in Rule 452.11 relating to amendments to investment contracts. That proposed change codified a NYSE interpretation that was published in 1992. This amendment is being filed to update the provision regarding the effective date and to reflect minor SEC staff comments on Amendment No. 2. Amendment No. 3 was withdrawn for technical reasons.

Current Requirements of NYSE Rule 452

Under the current NYSE and SEC 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 brokers may vote on certain matters deemed ''routine'' by the NYSE. One of the most important results of broker votes of uninstructed shares is their use in establishing a quorum at shareholder meetings.

Among the other matters which the current NYSE Rule 452 treats as routine is an ''uncontested'' election for a

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 4 supersedes and replaces the Exchange's original Form 19b–4 and Amendment Nos. 1 and 2.

[4] The Commission notes that the proposal also codifies two previously published interpretations that do not permit broker votes for material amendments to investment advisory contracts. *See infra* notes 10–11 and accompanying text.

[5] The Commission notes that the Exchange filed Amendment No. 2 on June 28, 2007.

company's board of directors.[6] Such elections remain the general practice in corporate America today, with contested elections occurring relatively infrequently. According to ADP, there were only thirty-four officially contested elections in calendar year 2004.

However in recent years the definition of a ''contested election'' has been questioned by a number of parties and interest groups.[7] This is because of the rise of a number of new types of proxy campaigns, including ''just vote no'' campaigns. Because these campaigns often do not result in competing solicitations, historically these efforts have not been considered ''contests'' for purposes of NYSE Rule 452, and thus broker votes have been counted. This has drawn the ire of some investor groups since generally brokers vote uninstructed shares in accordance with the incumbent board's recommendations.

On ''non-routine'' matters, which generally speaking are those involving a contest or any matter which may affect substantially the rights or privileges of stockholders, NYSE rules prohibit brokers from voting without receiving instructions from the beneficial owners. At present, the NYSE Rule 452.11 lists by way of example eighteen such ''non-routine'' matters, including items such as stockholder proposals opposed by management, and mergers or consolidations.

NYSE Proxy Working Group

The Proxy Working Group was created by the NYSE in April 2005 to review the NYSE rules regulating the proxy voting process, and more specifically to review and make recommendations with respect to NYSE Rules 450–460 (with a particular focus on Rule 452) and 465. In creating the Working Group, the NYSE sought to obtain a wide diversity of views as well as a broad range of expertise. As a result, the Working Group contains representatives from a number of different constituencies, all of whom have significant experience with the proxy voting process.

In June 2006, the Proxy Working Group prepared a draft report and a series of recommendations relating to their findings. In this report, the Proxy Working Group expressed its belief that the election of directors should no longer be viewed as routine under Rule 452 and thus that brokers should no longer be permitted to cast uninstructed shares for the election of directors.

The Proxy Working Group report notes that this proposed change could significantly impact the director election process. For example, it is likely to increase the costs of uncontested elections, as issuers will have to spend more money and effort to reach shareholders who previously did not vote. These costs may increase substantially with the rise of majority voting for directors, as issuers have to obtain the votes from shareholders who may not realize that their failure to vote constitutes a ''no'' vote. Such a change may also increase the influence of special interest groups or others with a particular agenda to challenge an incumbent board, at the expense of smaller shareholders. These consequences could fall most dramatically on smaller issuers, who have a smaller proportion of institutional investors and/or have greater difficulty in contacting shareholders and convincing them to vote in uncontested elections.

Despite these potential difficulties, the Proxy Working Group stated in its report that it is important to recognize that the election of a director, even where the election is uncontested, is not a routine event in the life of a corporation. While this is likely to result in some greater costs and difficulties for issuers, it is a cost required to be paid for better corporate governance and transparency of the election process.

Following the issuance of the draft Proxy Working Group Report, in June 2006, the NYSE circulated the report to its listed companies and certain other entities and asked for comment on all of the proposed recommendations. The NYSE received approximately 46 comment letters or emails on the proposed recommendations; 39 of these letters related to amending Rule 452 to make the election of directors a non-routine matter. 15 of these comment letters strongly supported the proposed change to Rule 452, 8 letters expressed the view that the SEC should undertake an extensive review of shareholder communications before Rule 452 is amended, and 16 letters expressed concern regarding the proposed amendment. Among the primary concerns expressed with respect to the proposed amendment to Rule 452 was the potential difficulty in obtaining a quorum in uncontested elections without the use of the broker discretionary vote pursuant to existing Rule 452. This issue was raised by a number of operating companies, especially representatives of small and mid-size companies.

The investment company community raised similar issues, emphasizing the cost and difficulties of obtaining a quorum as well as general problems in getting fund shareholders to vote.[8] In addition, the investment companies emphasized the different and unique regulatory and statutory regime governing their actions, which provides additional protections to investors. The Investment Company Institute (''ICI'') provided detailed information to the Proxy Working Group, including analyses about the additional costs that would be incurred by investment companies if such companies would not be allowed to count broker-votes in uncontested elections for directors, as well as the different shareholder profiles of investment companies and operating companies, and the differing regulatory regimes of investment companies.[9]

These issues were discussed at length by and among the members of the Proxy Working Group. In particular, the Proxy Working Group considered the heightened problems that investment companies face because of their disproportionately large retail shareholder base. In addition, the Proxy Working Group reviewed the types of issues often presented to shareholders of investment companies, and noted that such companies often do not include other ''routine'' matters on their ballot,

[6] Rule 452.11(2) defines a ''contest'' as a matter that ''is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management.''

[7] For example, in 2002, the Council of Institutional Investors publicly criticized in the media the NYSE's definition of ''contests'' as ''problematic'' because it fails to classify as contests ''just vote no'' campaigns, it fails to recognize the use of the Internet as a means of contesting management, it puts ADP in an inappropriate and conflicted role, and it is inconsistent with securities laws which recognize the validity of exempt solicitations. In a letter to the SEC dated June 13, 2003, Institutional Shareholders Services expressed concern that because ''the NYSE classifies the election of directors as a routine voting item unless a full-blown proxy contest has erupted,'' the efforts of shareholders to express disapproval of board actions at companies like Sprint and Tyco in the 2003 proxy season were ''watered down by broker votes.'' Moreover, in their presentations to the Working Group, several groups recommended that the definition of a contest be expanded or changed, including the AFL–CIO and the American Business Conference.

[8] The ICI submitted a report to the Proxy Working Group titled ''Costs of Eliminating Discretionary Broker Voting on Uncontested Elections of Investment Company Directors,'' which found, among other things, that if ''discretionary broker voting is eliminated, typical proxy costs [for investment companies] are estimated to more than double'' and that therefore ''fund expense ratios could rise by approximately 1 to 2 basis points owing to higher proxy costs''.

[9] The ICI Report made the point that eliminating discretionary broker voting will have a disproportionate impact on funds as compared to operating companies because funds have a higher proportion of retail investors. The Report also noted that funds already have a high number of re-solicitations and adjournments of shareholder meetings when there are non-routine items on the agenda.

which would allow broker discretionary voting for quorum purposes.

The Proxy Working Group reviewed the materials submitted by the ICI and other representatives of investment companies concerning the difficulties such companies would have if they were subject to the amendment to Rule 452 making director elections ''non-routine.'' Additionally, the Proxy Working Group reviewed and considered the fact that investment companies are subject to regulation under the Investment Company Act of 1940 (which also regulates shareholder participation in key decisions affecting such regulated funds), while operating companies are not subject to this Act.

The Proxy Working Group also had a number of discussions about the difficulties faced by smaller issuers, and recognizes that smaller issuers may be subject to some of the very same problems that investment companies are subject to, including a high percentage of shares held by ''retail'' investors, and an increased cost in obtaining a quorum as a result of the proposed changes to Rule 452. There was considerable concern and discussion about the potential problems facing smaller issuers as a result of the potential rule change, as well as discussion about the similarities and differences between smaller operating companies and investment companies.

Ultimately, the Working Group concluded that the unique regulatory regime governing investment companies made such companies sufficiently different from operating companies (regardless of size) that it was appropriate to treat such companies differently. Accordingly, the Proxy Working Group determined to amend its initial recommendation to the NYSE with respect to Rule 452 to recommend that such changes to Rule 452 not apply to any company registered under the Investment Company Act of 1940.

Conclusion

In light of the recommendations of the Proxy Working Group and based on the NYSE's own conclusion that the election of directors should no longer be deemed to be a ''routine matter,'' the NYSE proposes to amend NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to eliminate broker discretionary voting for the election of directors, but to except from that amendment companies registered under the Investment Company Act of 1940.

Effective Date

The proposed amendment will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, in the event the proposed amendment is not approved by the Commission until after August, 31, 2009, the effective date shall be delayed to a date which is at least four months after the approval date, and which does not fall within the first six months of the calendar year. In addition, in any case the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to the effective date but was properly adjourned to a date on or after the effective date.

Material Amendments to Investment Contracts

In addition to the current 18 specific actions set out in Supplementary Material .11 to Rule 452, the Exchange has long interpreted Rule 452 to preclude member organizations from voting without instructions in certain other situations, including on any material amendment to the investment advisory contract with an investment company.[10]

In addition, in 2005, the NYSE published an interpretation,[11] pursuant to a request from the SEC's Trading and Markets [sic] [12] Investment Management, that provided 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 (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'' for purposes of 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.

The NYSE proposes to amend Rule 452 to specifically codify these interpretations.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [13] 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.

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 Exchange Act.

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

Comment letters received on the proposed amendments are discussed above.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 4, is consistent with the Act. Comments may be submitted by any of the following methods:

[10] *See* Exchange Act Release No. 30697 (May 13, 1992) (SR–NYSE–1992–05).

[11] *See* Exchange Act Release No. 52569 (November 6, 2005) [*sic*] (SR–NYSE–2005–61). The Commission notes that the Release was dated October 6, 2005.

[12] The Commission notes that the correct reference is to the Commission's Division of Investment Management, as stated in the Form 19b–4.

[13] 15 U.S.C. 78f(b)(5).

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–2006–92 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–2006–92. 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 a.m. and 3 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 available publicly. All submissions should refer to File Number SR–NYSE–2006–92 and should be submitted on or before March 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4754 Filed 3–5–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6538]

Meeting of the Environmental Affairs Council (EAC) of the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR)

AGENCY: Department of State.

ACTION: Notice and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that, as set forth in Chapter 17 (Environment) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), the CAFTA–DR governments intend to hold the fourth meeting of the Environmental Affairs Council (the ''Council'') in San Jose, Costa Rica on March 10, 2009. The Council will hold an information session for members of the public on March 10, 2009, from 2–4 p.m. in the Ramada Herradura Hotel, facing the General Cañas Highway, five kilometers south of the Juan Santamaria International Airport. The purpose of the Council meetings is detailed below under **SUPPLEMENTARY INFORMATION**.

The meeting agenda will include a review of issues concerning implementation of the Environment Chapter, review and formal adoption of Working Procedures and a Public Outreach Plan for the Secretariat for Environmental Matters Under the CAFTA–DR (''Secretariat''), appointment of a new General Coordinator for the Secretariat, and presentations of various accomplishments under the CAFTA–DR Environmental Cooperation Program.

The Department of State and USTR invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items and to attend the public session. In preparing comments, we encourage submitters to refer to the CAFTA–DR Environment Chapter and the Final Environment Review of the CAFTA–DR (available at *http://www.ustr.gov*) and the Environmental Cooperation Agreement (ECA) (available at *http://www.state.gov/g/oes/env/trade/*).

DATES: To be assured of timely consideration, submit comments on or before March 9, 2009.

ADDRESSES: Written comments or suggestions should be submitted to both: (1) Rachel Kastenberg, Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy by electronic mail at *kastenbergRL@state.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 647–5947; and (2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at *mburr@ustr.eop.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 395–9517.

FOR FURTHER INFORMATION CONTACT: Rachel Kastenberg, Telephone (202) 647–9266 or Mara M. Burr, Telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: Article 17.5 of Chapter 17 of CAFTA–DR establishes an Environmental Affairs Council (the ''Council''). Article 17.5 requires the Council to meet at least once a year, unless the Parties otherwise agree, to discuss the implementation of, and progress under, Chapter 17. Article 17.5 further requires, unless the Parties otherwise agree, that each meeting of the Council include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of Chapter 17.

In Article 17.9 of the Chapter, the Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations and state their commitment to expanding their cooperative relationship on environmental matters. Article 17.9 also notes that the Parties have negotiated an Environmental Cooperation Agreement (ECA) that sets out certain priority areas of cooperation on environmental activities. These priority areas are reflected in Annex 17.9 and include, among other things, conserving and managing shared, migratory, and endangered species in international trade; exchanging information on domestic implementation of multilateral environmental agreements that all the Parties have ratified; and strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and polices.

At its fourth meeting, the Council will, among other things, (1) Review of issues concerning implementation of Chapter 17; (2) appoint a new General Coordinator for the Secretariat; (3) review and adopt the Secretariat's Working Procedures and Public