furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–5 requires that an SIBHC make and keep current certain records relating to its business. In addition, it requires that an SIBHC preserve those and other records for at least three years.

The collections of information required pursuant to Rule 17i–5 are necessary so that the Commission can adequately supervise the activities of these SIBHCs. In addition, these collections of information are needed to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section the Act. Rule 17i–5 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without this information and documentation, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

In addition to the one firm currently supervised by the Commission as a SIBHC, we estimate that 2 IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs; for a total of three firms. An SIBHC will generally require about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group at a cost of $9,200 per SIBHC.[7] An SIBHC will require, on average, approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year and a cost of $49,920.[8] Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty for a cost of $1,410.[9] Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records for a cost of $4,632.[10]

We believe that an IBHC likely will upgrade its information technology ("IT") systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–5.

The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[11] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 6, 2010.

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q(i)(3)(A).

[7] We believe that an SIBHC would have a Senior Treasury Manager create this record. According to the Securities Industry and Financial Markets Association ("SIFMA"), the hourly cost of a Senior Treasury Manager is $230, as reflected in the SIFMA's *Report on Management and Professional Earnings for 2008* ("SIFMA's Report on Professional Earnings), and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. ($230 × 40 hours) = $9,200.

[8] We believe that an SIBHC would have a Floor Supervisor, or equivalent, create this record with an hourly cost of $195, as reflected in SIFMA's Report on Professional Earnings"). ($195 × 256) = $49,920.

[9] On average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties. We believe that an SIBHC would have an Intermediate Accountant create this record, which according to SIFMA's Report on Professional Earnings receives an hourly rate of $141. ($141 × ((30 minutes × 20 counterparties)/60 minutes) = $1,410.

[10] We believe that an SIBHC would have a Programmer Analyst perform this task and according to SIFMA's Report on Professional Earnings, a Programmer Analyst receives an hourly rate of $193. ($193 × 24) = $4,632.

[11] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61292; File No. SR–NYSEAmex-2009–93]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide Regarding Broker Discretionary Voting for Election of Directors and on Material Amendments to Investment Advisory Contracts

January 5, 2010.

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 December 23, 2009, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide (the "Company Guide"). The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and on the Exchange's Web site at *http://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,

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

[2] 17 CFR 240.19b–4.

and basis for, the proposed rule change and 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex is proposing to amend Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide,[3] both entitled "Giving Proxies by Member Organization," to eliminate broker discretionary voting for the election of directors. Rule 452—NYSE Amex Equities (and Section 723 of the Company Guide) 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. However, Rule 452.11—NYSE Amex Equities (and Commentary .11 to Section 723 of the Company Guide) lists, by way of example, eighteen (18) specific non-routine matters as to which a member organization may not give a proxy to vote without instructions from beneficial owners. The proposed rule change would amend this list to include the election of directors, except in the case of a company registered under the Investment Company Act of 1940. The Exchange is also proposing to amend this list to include material amendments to investment advisory contracts with an investment company in order to codify previously existing interpretations of the Exchange with respect to investment advisory contracts.

The proposed rule change is identical to a rule change filed by the New York Stock Exchange ("NYSE") (the "NYSE Rule Filing") that was recently approved by the Commission [4] and will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to January 1, 2010 but was properly adjourned to a date on or after that date.[5]

The Exchange believes that the proposed rule change is in conformity with the view of the Commission stated in the NYSE Approval Order that "while other self-regulatory organizations currently allow discretionary voting, we would expect these markets to make changes to conform to the NYSE's new rules to eliminate any disparities involving voting depending on where shares are held." [6]

Under the current NYSE Amex 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—NYSE Amex Equities provides that brokers may vote on certain matters deemed "routine" by the Exchange. 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 Rule 452—NYSE Amex Equities treats as routine is an "uncontested" election for a company's board of directors.[7] Such elections remain the general practice in corporate America today, with contested elections occurring relatively infrequently.

However, in recent years the definition of a "contested election" has been questioned by a number of parties and interest groups.[8] 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 Rule 452—NYSE Amex Equities, 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 Amex rules prohibit brokers from voting without receiving instructions from the beneficial owners. At present, Rule 452.11—NYSE Amex Equities lists by way of example eighteen such "non-routine" matters, including items such as stockholder proposals opposed by management, and mergers or consolidations.

The NYSE has amended 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. The Commission has stated in the NYSE Approval Order that it expects other markets to make changes to their comparable rules to conform to the NYSE's new rules and eliminate any disparities involving voting. Consequently, NYSE Amex proposes herein to amend Rule 452—NYSE Amex Equities, and corresponding Section 723 of the Company Guide (which closely track NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, respectively, prior to their recent amendment), 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

[3] Section 723 of the Company Guide is identical to Rule 452—NYSE Amex Equities and the proposed rule change will apply to both.

[4] *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92) ("NYSE Approval Order").

[5] In the process of making its determination that the election of directors should no longer be deemed to be a "routine matter" and that broker discretionary voting for the election of directors should be eliminated, the NYSE in 2005 created a Proxy Working Group to review and make recommendations with respect to the NYSE rules regulating the proxy voting process. The Proxy Working Group contained representatives from a number of different constituencies, all of whom have significant experience with the proxy voting process. One of the recommendations that came from the Proxy Working Group was that the proposed changes to NYSE Rule 452 should not apply to any company registered under the Investment Company Act of 1940, and this exception was adopted by the NYSE. For a full discussion of the role of the Proxy Working Group, see the NYSE Rule Filing.

[6] NYSE Approval Order, 74 FR at 33298, n. 69.

[7] Rule 452.11(2)—NYSE Amex Equities 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."

[8] For example, in 2002, the Council of Institutional Investors publicly criticized in the media the NYSE's definition of "contests" (which is exactly identical to NYSE Amex's definition of the term) 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 Proxy Working Group, several groups recommended that the definition of a contest be expanded or changed, including the AFL–CIO and the American Business Conference.

shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to January 1, 2010 but was properly adjourned to a date on or after that date.

Material Amendments to Investment Contracts

In addition to the current 18 specific actions set out in Supplementary Material .11 to NYSE Rule 452, the NYSE has long interpreted NYSE 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.[9]

In addition, in 2005, the NYSE published an interpretation,[10] pursuant to a request from the SEC's Division of 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 NYSE 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 of the NYSE 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.

Also in 2005, immediately following publication of the NYSE's interpretation referenced in the preceding paragraph, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), also filed a rule change with the Commission establishing the exact same interpretation with respect to investment advisory contracts.[11] Noting that "[a] proposed rule change filed by the NYSE of its interpretation of its rule governing proxies by member organizations on votes relating to changes to investment advisory contracts recently became effective," the Amex Interpretation Release stated, "Following discussions with the staff of the Commission's Division of Investment Management, the Amex has determined to adopt a comparable interpretation of [Amex] Rule 577 to conform to the NYSE interpretation."[12]

The NYSE has amended NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to specifically codify these interpretations in its rules. Consistent with the previous adoption by Amex of these NYSE interpretations with respect to investment advisory contracts, the Exchange proposes herein to amend Rule 452—NYSE Amex Equities, and corresponding Section 723 of the Company Guide (which closely track NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, respectively, prior to their recent amendment), to specifically codify these interpretations in the Exchange's rules as well.

2. Statutory Basis

The basis under the 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. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by ensuring better corporate governance and transparency of the election process for directors and by promoting greater uniformity with the proxy rules of other exchanges. In particular, for Exchange member firms that are also NYSE member firms, confusion might arise as to which exchange's proxy voting rules are applicable to a company listed on the Exchange if there are disparities between the rules of the Exchange and the NYSE. The proposal should further the protection of investors and the public interest by assuring that voting on matters as critical as the election of directors can no longer be determined by brokers without instructions from the beneficial owner, and thus should enhance corporate governance and accountability to shareholders.

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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated, among

[9] *See* Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR–NYSE–1992–05).

[10] *See* Securities Exchange Act Release No. 52569 (October 6, 2005), 70 FR 60118 (October 14, 2005) (SR–NYSE–2005–61).

[11] *See* Securities Exchange Act Release No. 52765 (November 10, 2005), 70 FR 69999 (November 18, 2005) (SR–Amex–2005–102) ("Amex Interpretation Release").

[12] *Id.*

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

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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. The Exchange has satisfied the pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

other things, that waiver of the 30-day operative delay will allow the change to become operative on the same date as NYSE's rule change and conform to the Commission's desire to eliminate any disparities involving voting.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.[20] The proposal would permit the Exchange to comply with the Commission's stated goal that other self-regulatory organizations, that currently allow member discretionary voting for director elections, conform their rules to the NYSE's new rules to eliminate any disparities involving voting depending on where the shares are held. Further, the proposal would codify previously published interpretations with respect to voting on investment advisory contracts. Finally, the Commission notes that the NYSE's recently adopted rule changes, which are identical to the Exchange's proposed changes, were subject to full notice and comment, and considered and approved by the Commission.[21] Based on the above, the Commission finds that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest and the proposal is therefore deemed effective upon filing.

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–NYSEAmex–2009–93 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–NYSEAmex–2009–93. 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–NYSEAmex–2009–93 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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[20] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] *See supra* note 4.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61296; File No. SR–ISE–2009–114]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 6, 2010.

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 December 31, 2009, International Securities Exchange, LLC ("ISE" 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 ISE is proposing to amend its Schedule of Fees to increase the surcharge fee for transactions in options on the Nasdaq-100® Stock Index. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The Exchange is proposing to amend its Schedule of Fees to increase the surcharge fee for transactions in options

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

[2] 17 CFR 240.19b–4.