

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 38 Amendment No. (req. for Amendments *)
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Filing by New York Stock Exchange LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to modify its application of the proxy delivery requirements of NYSE Rule 451

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* John Last Name \* Carey  
 Title \* Senior Director, NYSE Group Inc.  
 E-mail \* John.Carey@theice.com  
 Telephone \* (212) 656-5640 Fax (212) 656-2028

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Senior Counsel

Date 04/23/2020  
 By David De Gregorio  
 (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

David De Gregorio,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to modify its application of the proxy delivery requirements of NYSE Rule 451(b)(1) through and including May 31, 2020.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

- (b) The Exchange does not believe that the proposed rule change would have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

John Carey  
Senior Director  
NYSE Group, Inc.  
(212) 656-5640

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

- (a) Purpose

NYSE Rule 452 provides for limited circumstances in which a member organization may vote shares it holds on behalf of its “street” name customers when the beneficial owner has not provided voting instructions with respect to certain “routine” matters. This ability on the part of member organizations is

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

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

subject to certain limitations, including the requirement of Rule 451(b)(1) that the proxy materials mailed to beneficial holders include the following disclosure:

a request for voting instructions and, as to matters which may be voted without instructions under Rule 452, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock...

The ability of member organizations to vote on “routine” matters serves an important purpose for many public companies. The low level of voting response from “street” name account holders to proxy solicitations means that it is often difficult for companies to meet applicable quorum requirements under state law, the company’s constitutive documents or stock exchange rules. However, the ability of member organizations to vote on routine items in the absence of beneficial owner proxy voting instructions enables beneficial owners to be counted as present for quorum purposes for the meeting as a whole even if they do not submit voting instructions and therefore enables companies to conduct all required business at their shareholder meetings. Generally, Rule 452 does not allow member organizations to vote uninstructed shares on nonroutine matters, so the voting of those shares by member organizations with respect to routine matters does not generally affect the outcome of any vote of any importance to the company and its shareholders, while facilitating the effective conduct of shareholder meetings.

The Exchange has been made aware that the recent ongoing spread of the COVID-19 virus throughout the United States and the social distancing and stay-at-home measures imposed by many state and local governments has severely disrupted the operations of the primary intermediary responsible for distributing proxy materials on behalf of member organizations. The primary intermediary has informed the Exchange that it is having difficulty in some cases meeting the specification of Rule 451(b)(1) to transmit proxy materials to beneficial owners at least 15 days prior to shareholder meetings, due to delays in receiving the printed materials from issuers for distribution and also because its own processing times have been slowed down by reduced staffing levels caused by the disruption associated with the spread of COVID-19.

The Exchange is concerned about the effect on the ability of companies to hold shareholder meetings that may arise out of the current difficulties being experienced in transmitting proxy materials no later than the 15 days in advance of the meeting specified in Rule 451(b)(1). The Exchange notes that it has been the practice since at least the 1990s to apply Rule 451(b)(1) on the basis that member organizations may not vote any uninstructed shares if the mailing of any of the required physical proxy materials is made later than 15 days before the meeting, including shares whose beneficial owner opted for electronic delivery and to whom the materials are transmitted electronically on a timely basis.<sup>3</sup> Consequently, many companies may have difficulty meeting applicable quorum requirements for their scheduled shareholder meetings.

The primary intermediary has informed the Exchange that it would need to undertake significant systems development work to be able to differentiate for voting purposes those shares whose beneficial owners are sent timely electronic distributions from those shares whose beneficial owners are sent physical distributions that are mailed fewer than fifteen days before a shareholder meeting. As this development work would likely take months to complete, it is not possible during the upcoming proxy season, occurring during the current crisis, to allow the voting of uninstructed shares of a company where the materials are transmitted no later than 15 days in advance of the meeting and to disallow the voting on uninstructed shares where the materials were transmitted past that deadline.

To alleviate the problem described above, the Exchange proposes to modify its application of Rule 451(b)(1) temporarily for shareholder meetings occurring on or before May 31, 2020. As proposed, the Exchange would permit member organizations to vote uninstructed shares as long as proxy materials are transmitted to beneficial owners no later than 10 days prior to the shareholder meeting, rather than the fifteen day period required by the text of the rule. All of the other requirements and limitations associated with voting by member organizations would continue to be applied during this period. The Exchange expects that best efforts will be made to ensure that transmissions of proxy materials will continue to be made prior to the fifteenth day before the meeting whenever possible, either in whole or in part. In particular, the Exchange expects electronic transmissions of proxy materials to continue to be made within the normal time frames provided by the rule.

In order to rely on the proposed relief, the intermediary acting as agent for the member organization will be required to post prominently on its website the following disclosures:

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<sup>3</sup> The Exchange understands that proxy materials are delivered electronically to the beneficial owners of approximately 84% of all shares and approximately 43% of shares held by retail investors, according to data provided by the primary intermediary with respect to the 12 months ended June 30, 2018.

- that it is experiencing operational challenges as a result of the disruptive effects of COVID-19 and is therefore experiencing difficulty in some cases in transmitting proxy materials to beneficial owners at least 15 days prior to shareholder meeting dates;
- as a consequence, it is relying on relief provided by the NYSE to shorten from 15 days to 10 days the period required under Rule 451(b)(1) that proxy materials must be transmitted to beneficial owners in order for the member organization to be permitted to vote its customers' uninstructed shares on routine matters;<sup>4</sup>
- a list of the companies whose proxy distributions are affected, including the meeting date and the date on which the transmission was completed; and
- a statement encouraging beneficial owners to submit their voting instructions through the electronic or telephonic means, if any, described in the request for voting instructions sent by the member organization to ensure that such instructions are received in advance of the shareholder meeting.

While the Exchange believes that the proposed temporary modification of Rule 451(b)(1) would provide significant relief to issuers during the ongoing COVID-19 crisis by enabling them to conduct their shareholder meetings as planned, it does not believe that it would have a significant effect on the voting right of beneficial owners or the outcome of any material proposals voted on at those meetings. First, a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. The electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. Second, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone,<sup>5</sup> so the Exchange believes that the rule as modified would continue to provide adequate time for most beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections (other than an uncontested election of a

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<sup>4</sup> The intermediary should provide a link on its website to this filing as posted on nyse.com.

<sup>5</sup> Based on information provided by the primary intermediary for the 12 months ended December 24, 2019, the Exchange understands that approximately 30% of the shares owned by retail shareholders are voted. Of the voted amount, 26% are voted by paper vote instruction form and 74% are voted by electronic methods including internet or phone.

director of an investment company registered under the Investment Company Act of 1940 (the “Investment Company Act”)<sup>6</sup> and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

Rule 451(b) provides that the member organization as record holder may give a proxy to vote shares if the beneficial owner has not provided voting instructions before the tenth day preceding the shareholder meeting. However, the number of shares included in the member organization’s proxy is adjusted over the period right up to the time of the meeting to reflect the ability of beneficial owners to continue to provide instructions throughout that period. Supplementary Material .20 to Rule 451 includes forms of letters to be sent to beneficial owners when soliciting voting instructions. The forms of letters provided include the following provision:

If we do not hear from you by the tenth day before the meeting, we may vote your shares in our discretion to the extent permitted by the rules of the Exchange. If you are unable to communicate with us by such date, we will, nevertheless follow your voting instructions, even if our discretionary vote has already been given, provided your instructions are received prior to the stockholders' meeting.

During the period of the proposed relief from the 15-day requirement, the forms of letters included in proxy mailings must clearly emphasize the ability of beneficial owners to provide voting instructions right up to the time of the meeting.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change is designed to provide significant relief to issuers during the ongoing COVID-19 crisis by enabling them to conduct their

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<sup>6</sup> See Rule 452, Supplementary Material .11, subsections (2) and (19).

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

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

shareholder meetings as planned. The Exchange believes that the proposed rule change is consistent with the protection of investors because it would not have a significant effect on the voting rights of beneficial owners or the outcome of any material proposals voted on at shareholder meetings. The Exchange notes that a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. Electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. In addition, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the Exchange believes that the rule as modified would continue to provide adequate time for beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide limited relief to member organizations and issuers in relation to difficulties experienced in distributing proxy materials during the current ongoing COVID-19 crisis.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the proposed rule change qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6), thereunder.<sup>10</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).



The Exchange asserts that the proposed rule change (i) would not significantly affect the protection of investors or the public interest, (ii) would not impose any significant burden on competition, and (iii) by its terms, would not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its 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, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition. While the Exchange believes that the proposed temporary modification of Rule 451(b)(1) would provide significant relief to issuers during the ongoing COVID-19 crisis by enabling them to conduct their shareholder meetings as planned, it does not believe that it would have a significant effect on the voting right of beneficial owners or the outcome of any material proposals voted on at those meetings. The Exchange notes that a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. The electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. In addition, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the Exchange believes that the rule as modified would continue to provide adequate time for beneficial owners to review their proxy materials and vote on a timely basis. The intermediaries acting as agents for the member organizations will also post on their websites a statement encouraging shareholders to send voting instructions by electronic means or by telephone. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

In view of the immediate nature of the relief requested, the Exchange respectfully requests to have the proposed amendments become operative immediately. The Exchange requests that the Commission waive the five business day notice of the Exchange’s intent to file this proposed rule change, as well as the 30-day operative delay, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A)<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

Waiver of these periods would allow the Exchange to immediately implement the proposed rule change upon its filing with the Commission. As noted above, the Exchange believes that the proposed rule change is consistent with the protection of investors because it would not have a significant effect on the voting rights of beneficial owners or the outcome of any material proposals voted on at shareholder meetings. The Exchange notes that a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. Electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. In addition, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the Exchange believes that the rule as modified would continue to provide adequate time for beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

The Exchange believes that waiver of both the operative delay and the requirement to provide five-days’ written notice of the proposed rule change would be consistent with the protection of investors and the public interest because of the difficulties companies would have in meeting quorum requirements at scheduled shareholder meetings during the upcoming proxy season if member organizations are unable vote uninstructed shares on routine matters.. The waiver of the operative delay would enable companies to plan appropriately for their forthcoming shareholder meetings if their proxy distributions would need to be mailed during that period.

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule changes 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSE-2020-38)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to modify its application of the proxy delivery requirements of NYSE Rule 451(b)(1) through and including May 31, 2020

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 23, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 modify its application of the proxy delivery requirements of NYSE Rule 451(b)(1) through and including May 31, 2020. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 self-regulatory organization included

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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 Rule 452 provides for limited circumstances in which a member organization may vote shares it holds on behalf of its "street" name customers when the beneficial owner has not provided voting instructions with respect to certain "routine" matters. This ability on the part of member organizations is subject to certain limitations, including the requirement of Rule 451(b)(1) that the proxy materials mailed to beneficial holders include the following disclosure:

a request for voting instructions and, as to matters which may be voted without instructions under Rule 452, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the

statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock.

The ability of member organizations to vote on “routine” matters serves an important purpose for many public companies. The low level of voting response from “street” name account holders to proxy solicitations means that it is often difficult for companies to meet applicable quorum requirements under state law, the company’s constitutive documents or stock exchange rules. However, the ability of member organizations to vote on routine items in the absence of beneficial owner proxy voting instructions enables beneficial owners to be counted as present for quorum purposes for the meeting as a whole even if they do not submit voting instructions and therefore enables companies to conduct all required business at their shareholder meetings. Generally, Rule 452 does not allow member organizations to vote uninstructed shares on nonroutine matters, so the voting of those shares by member organizations with respect to routine matters does not generally affect the outcome of any vote of any importance to the company and its shareholders, while facilitating the effective conduct of shareholder meetings.

The Exchange has been made aware that the recent ongoing spread of the COVID-19 virus throughout the United States and the social distancing and stay-at-home measures imposed by many state and local governments has severely disrupted the operations of the primary intermediary responsible for distributing proxy materials on behalf of member organizations. The primary intermediary has informed the Exchange that it is having difficulty in some cases meeting the specification of Rule 451(b)(1) to

transmit proxy materials to beneficial owners at least 15 days prior to shareholder meetings, due to delays in receiving the printed materials from issuers for distribution and also because its own processing times have been slowed down by reduced staffing levels caused by the disruption associated with the spread of COVID-19.

The Exchange is concerned about the effect on the ability of companies to hold shareholder meetings that may arise out of the current difficulties being experienced in transmitting proxy materials no later than the 15 days in advance of the meeting specified in Rule 451(b)(1). The Exchange notes that it has been the practice since at least the 1990s to apply Rule 451(b)(1) on the basis that member organizations may not vote any uninstructed shares if the mailing of any of the required physical proxy materials is made later than 15 days before the meeting, including shares whose beneficial owner opted for electronic delivery and to whom the materials are transmitted electronically on a timely basis.<sup>4</sup> Consequently, many companies may have difficulty meeting applicable quorum requirements for their scheduled shareholder meetings.

The primary intermediary has informed the Exchange that it would need to undertake significant systems development work to be able to differentiate for voting purposes those shares whose beneficial owners are sent timely electronic distributions from those shares whose beneficial owners are sent physical distributions that are mailed fewer than fifteen days before a shareholder meeting. As this development work would likely take months to complete, it is not possible during the upcoming proxy season, occurring during the current crisis, to allow the voting of uninstructed shares of a

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<sup>4</sup> The Exchange understands that proxy materials are delivered electronically to the beneficial owners of approximately 84% of all shares and approximately 43% of shares held by retail investors, according to data provided by the primary intermediary with respect to the 12 months ended June 30, 2018.

company where the materials are transmitted no later than 15 days in advance of the meeting and to disallow the voting on uninstructed shares where the materials were transmitted past that deadline.

To alleviate the problem described above, the Exchange proposes to modify its application of Rule 451(b)(1) temporarily for shareholder meetings occurring on or before May 31, 2020. As proposed, the Exchange would permit member organizations to vote uninstructed shares as long as proxy materials are transmitted to beneficial owners no later than 10 days prior to the shareholder meeting, rather than the fifteen day period required by the text of the rule. All of the other requirements and limitations associated with voting by member organizations would continue to be applied during this period. The Exchange expects that best efforts will be made to ensure that transmissions of proxy materials will continue to be made prior to the fifteenth day before the meeting whenever possible, either in whole or in part. In particular, the Exchange expects electronic transmissions of proxy materials to continue to be made within the normal time frames provided by the rule.

In order to rely on the proposed relief, the intermediary acting as agent for the member organization will be required to post prominently on its website the following disclosures:

- that it is experiencing operational challenges as a result of the disruptive effects of COVID-19 and is therefore experiencing difficulty in some cases in transmitting proxy materials to beneficial owners at least 15 days prior to shareholder meeting dates;



- as a consequence, it is relying on relief provided by the NYSE to shorten from 15 days to 10 days the period required under Rule 451(b)(1) that proxy materials must be transmitted to beneficial owners in order for the member organization to be permitted to vote its customers' uninstructed shares on routine matters;<sup>5</sup>
- a list of the companies whose proxy distributions are affected, including the meeting date and the date on which the transmission was completed; and
- a statement encouraging beneficial owners to submit their voting instructions through the electronic or telephonic means, if any, described in the request for voting instructions sent by the member organization to ensure that such instructions are received in advance of the shareholder meeting.

While the Exchange believes that the proposed temporary modification of Rule 451(b)(1) would provide significant relief to issuers during the ongoing COVID-19 crisis by enabling them to conduct their shareholder meetings as planned, it does not believe that it would have a significant effect on the voting right of beneficial owners or the outcome of any material proposals voted on at those meetings. First, a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. The electronic distributions to those shareholders would not be delayed as a result of the proposed accommodation. Second, a significant percentage of shareholders who receive physical distributions of proxy

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<sup>5</sup> The intermediary should provide a link on its website to this filing as posted on nyse.com.

materials and vote, vote through the internet or by phone,<sup>6</sup> so the Exchange believes that the rule as modified would continue to provide adequate time for most beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the “Investment Company Act”))<sup>7</sup> and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

Rule 451(b) provides that the member organization as record holder may give a proxy to vote shares if the beneficial owner has not provided voting instructions before the tenth day preceding the shareholder meeting. However, the number of shares included in the member organization’s proxy is adjusted over the period right up to the time of the meeting to reflect the ability of beneficial owners to continue to provide instructions throughout that period. Supplementary Material .20 to Rule 451 includes forms of letters to be sent to beneficial owners when soliciting voting instructions. The forms of letters provided include the following provision:

If we do not hear from you by the tenth day before the meeting, we may  
vote your shares in our discretion to the extent permitted by the rules of

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<sup>6</sup> Based on information provided by the primary intermediary for the 12 months ended December 24, 2019, the Exchange understands that approximately 30% of the shares owned by retail shareholders are voted. Of the voted amount, 26% are voted by paper vote instruction form and 74% are voted by electronic methods including internet or phone.

<sup>7</sup> See Rule 452, Supplementary Material .11, subsections (2) and (19).

the Exchange. If you are unable to communicate with us by such date, we will, nevertheless follow your voting instructions, even if our discretionary vote has already been given, provided your instructions are received prior to the stockholders' meeting.

During the period of the proposed relief from the 15-day requirement, the forms of letters included in proxy mailings must clearly emphasize the ability of beneficial owners to provide voting instructions right up to the time of the meeting.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change is designed to provide significant relief to issuers during the ongoing COVID-19 crisis by enabling them to conduct their shareholder meetings as planned. The Exchange believes that the proposed rule change is consistent with the protection of investors because it would not have a significant effect on the voting rights of beneficial owners or the outcome of any material proposals voted on at shareholder meetings. The Exchange notes that a high percentage of “street” name shareholders of most public companies elect to receive electronic delivery of proxy materials and vote by electronic means. Electronic distributions to those shareholders

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

would not be delayed as a result of the proposed accommodation. In addition, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the Exchange believes that the rule as modified would continue to provide adequate time for beneficial owners to review their proxy materials and vote on a timely basis. The Exchange also notes that Rule 452 generally prohibits member organizations from voting material matters such as director elections and equity compensation plans and that member organizations can vote only on routine matters such as the ratification of auditors (which is generally included on a meeting agenda precisely to ensure the presence of all shares held in brokerage accounts for quorum purposes).

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide limited relief to member organizations and issuers in relation to difficulties experienced in distributing proxy materials during the current ongoing COVID-19 crisis.

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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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) 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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:

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-2020-38 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2020-38. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).