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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74287; File No. SR-NYSE-2015-07)

February 18, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 402.05 of the NYSE Listed Company Manual to Clarify that Listed Companies Soliciting Proxy Material Through Brokers or Other Entities Must Comply with SEC Rule 14a-13

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 February 3, 2015, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) 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 Section 402.05 of the NYSE Listed Company Manual (the “Manual”). As amended, the rule will clarify that listed companies soliciting proxy material through brokers or other entities must comply with Rule 14a-13 (“SEC Rule 14a-13”) under the Act. The text of 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.

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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.

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Section 402.05 of the Manual to clarify that listed companies soliciting proxy material through brokers or other entities must comply with SEC Rule 14a-13.

SEC Rule 14a-13 sets forth procedures that must be followed by listed companies that intend to solicit proxies from holders of shares entitled to vote at a meeting, where such shares are held of record by a broker or other entity. Specifically, Rule 14a-13 mandates that, among other things, listed companies must inquire of the record holder whether other persons are beneficial owners of the subject shares and, if so, how many copies of the relevant proxy or other soliciting materials must be provided to supply such materials to the beneficial owners. SEC Rule 14a-13 further sets forth the timeline on which inquiry of the record holder must be made.

SEC Rule 14a-13 requires listed companies to make the aforementioned inquiry at least 20 business days prior to the record date for the relevant shareholder meeting, or (i) if such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations

are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown.

In its current form, Section 402.05 of the Manual is intended to incorporate the requirements of SEC Rule 14a-13 with respect to the obligations of a listed company to make inquiry of brokers in advance of a shareholder meeting. Indeed, Section 402.05 makes specific reference to the Commission's rule requiring issuers to distribute broker search cards 20 business days in advance of a record date. However, Section 402.05 of the Manual in its current form also separately states that a listed company's inquiry of brokers must be made not less than 10 days in advance of a record date. The Exchange imposed this absolute 10 day minimum in recognition of the fact that the provisions of SEC Rule 14a-13 allow, in certain limited circumstances, for a listed company to inquire of brokers less than 20 days in advance of a record date for a special meeting (but not for an annual shareholders' meeting). While providing for limited exceptions to the 20-day advance inquiry requirement, SEC Rule 14a-13 does not explicitly establish an absolute minimum number of days that the inquiry must be made in advance of the record date.

Based on conversations with market participants and the SEC staff, the Exchange has become concerned that Section 402.05 of the Manual, as currently drafted, may lead to confusion with respect to what is required of listed companies making inquiry of brokers in advance of a shareholder meeting. First, despite making specific reference to the Commission's 20-day advance inquiry rule (i.e., SEC Rule 14a-13), the Exchange believes Section 402.05 could be read as requiring only a 10-day advance inquiry. Second, the Exchange understands that while

Rule 14a-13(a)(3)(i) and (ii) codifies two exceptions to the 20-day advance inquiry requirement, any company seeking to rely on these exceptions in the limited, if any, circumstances in which the SEC would not object is not prohibited from conducting its inquiry less than 10 days in advance of the record date. Third, the Exchange has not adopted a rule, as contemplated by Rule 14a-13(a)(3)(iii), that permits issuers to show “good cause” for why they cannot comply with Rule 14a-13’s advance inquiry requirement. Accordingly, the Exchange believes that the 10-day period presently described in Section 402.05 is in conflict with the requirements of Rule 14a-13. Therefore, the Exchange proposes to revise Section 402.05 of the Manual to clarify that listed companies soliciting proxy material through brokers or other entities must comply with the provisions of SEC Rule 14a-13 and that the Exchange does not impose any additional requirements with respect to the relevant inquiry of brokers. Further, the Exchange proposes to delete the requirement in Section 402.05 of the Manual that listed companies immediately advise the Exchange if it becomes impossible for them to make an inquiry of brokers at least ten days before a record date. Given that listed companies are required to comply with SEC Rule 14a-13 and the Exchange has no authority to waive compliance with such rule, the Exchange believes that such notice requirement is unnecessary.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

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<sup>4</sup> 15 U.S.C. 78f(b).

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

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it eliminates potential confusion between the requirements of SEC Rule 14a-13 and Exchange rules and clarifies that SEC Rule 14a-13 is the ultimate authority with respect to requirements related to inquiry of brokers in advance of a shareholder meeting.

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 purpose of the Act. The proposed rule change does not significantly affect competition, but rather simply seeks to align the Exchange rule with SEC Rule 14a-13 with respect to requirements related to inquiry of brokers in advance of a shareholder meeting.

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>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>10</sup> to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### 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-2015-07 on the subject line.

##### Paper Comments:

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). 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 this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2015-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2015-07 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>11</sup>

Brent J. Fields  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).