ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form number	Annual responses	Time (minutes)	Burden (hours)
G–254	1,500	5–35	623
G–254a	1,500	5	125
Total	3,000		748

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–33040 Filed 12–23–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66006; File No. SR–NYSEAmex–2011–97]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Amendment to NYSE Amex Rule 452 and Corresponding Section 723 of the Company Guide and Amex Rule 577 Relating to Discretionary Proxy Voting on Executive Compensation Matters

December 20, 2011.

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 6, 2011, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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 corresponding Section 723 of the NYSE Amex Company Guide (''Company Guide'') and to replace the text of Rule 577 of the NYSE Amex Rules with a cross-reference indicating that Rule 452—NYSE Amex Equities and Section 723 of the Company Guide apply to all NYSE Amex member organizations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and 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

NYSE Amex is proposing to amend Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide, each entitled ''*Giving Proxies by Member Organization,''* to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation. The foregoing changes are required by the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), which was signed by the President on July 21, 2010. The Exchange is also proposing to add the words ''or authorize'' in certain places throughout the rules to clarify that the rules cover not only the giving of a proxy but also the authorization of such proxy.

Under current NYSE Amex and Commission 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 and corresponding Section 723 of the Company Guide provide that a broker may vote on certain matters when the broker has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders, and does not include authorization for a merger, consolidation or any matter which may affect substantially the rights or privileges of such stock. In addition, Rule 452.11—NYSE Amex Equities and Commentary .11 to Section 723 of the Company Guide currently identify 20 matters with respect to which brokers may not vote without instructions from beneficial owners. Prior to the July 21, 2010 enactment of the Dodd-Frank Act, under Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide and the Exchange's prior interpretations, member organizations were permitted to cast votes on some matters, including some executive compensation proposals, without specific instructions from beneficial owners of the stock.

Section 957 of the Dodd-Frank Act amends Section 6(b)[3] of the Exchange Act to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12[4] of the Exchange Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78l.

instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation or (iii) any other significant matter, as determined by the Commission, by rule.

Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide already prohibit member organizations from voting uninstructed shares if the matter voted on is the election of directors (other than in the case of an issuer registered under the Investment Company Act, provided the matter is not the subject of a counter-solicitation). The Commission has not at this time determined by rule any other significant matters with respect to which a national securities exchange must prohibit member organizations from voting uninstructed shares. Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to amend Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide to also prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation.

Specifically, the Exchange is proposing to add to Rule 452.11—NYSE Amex Equities and corresponding Commentary .11 to Section 723 of the Company Guide (both entitled ''*When member organization may not vote without customer instructions*'') a new Item 21 and accompanying commentary to provide that a member organization may not give or authorize a proxy to vote without instructions from the beneficial owner when the matter to be voted upon relates to executive compensation. The proposed commentary to Item 21 of Rule 452.11—NYSE Amex Equities and corresponding Section 723 of the Company Guide would clarify that a matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under Rule 452.11—NYSE Amex Equities or corresponding Section 723 of the Company Guide. The Exchange proposes to add new Commentary to each of Item 12 and Item 13 under Rule 452.11—NYSE Amex Equities and corresponding Section 723 of the Company Guide to specify that any vote on these or similar executive compensation-related matters would be subject to the requirements of Rule 452—NYSE Amex Equities, as amended, or corresponding Section 723 of the Company Guide, as amended.

The Exchange also proposes in this filing to delete the text of NYSE Amex Rule 577 (entitled ''*Giving Proxies by Member Organizations*'') from the NYSE Amex Rulebook and replace it with a cross-reference indicating that Rule 452—NYSE Amex and Section 723 of the Company Guide apply to all NYSE Amex member organizations. Rule 452—NYSE Amex Equities and Section 723 of the Company Guide include all of the restrictions contained in NYSE Amex Rule 577 and some additional restrictions that have been added in recent years that have not been added to NYSE Amex Rule 577.[5] In light of the fact that all of the requirements of NYSE Amex Rule 577 are duplicated in Rule 452—NYSE Amex Equities and Section 723 of the Company Guide, the Exchange believes that it is appropriate to replace the text of NYSE Amex Rule 577 with the proposed cross-reference and that doing so will avoid any confusion associated with having two duplicative rules governing the same activity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,[6] in general and with Section 6(b)(10)[7] of the Exchange Act, in particular. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(10) that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that the proposed rule change is consistent with the requirements under Section 6(b)(5)[8] 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. The Exchange is adopting this proposed rule change to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Exchange Act, particularly with respect to the protection of investors and the public interest. The requirements of NYSE Amex Rule 577 are all duplicative of Rule 452—NYSE Amex Equities and Section 723 of the Company Guide and its replacement by a simple cross-reference to those other rules serves the purpose of avoiding potential confusion without changing the substantive requirements in any way and is therefore consistent with the protection of investors and the public interest. The addition of the words ''or authorize'' in certain places throughout Rule 452—NYSE Amex and Section 723 of the Company Guide is a clarification and not a substantive change and is therefore consistent with the protection of 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 Act.

[5] In addition to the requirements of NYSE Amex Rule 577, Rule 452—NYSE Amex Equities prohibits brokers from voting uninstructed shares with respect to (i) the election of directors (except an uncontested director election of an investment company registered under the Investment Company Act of 1940) and (ii) any material amendment to an investment advisory contract with an investment company.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(10).

[8] 15 U.S.C. 78f(b)(5).

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. 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–97 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex–2011–97. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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 publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–97 and should be submitted on or before January 17, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis so that the Exchange could comply with the requirements of the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] The Commission believes that the proposal is consistent with Section 6(b)(10) [10] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5) [11] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that ''final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.'' [12] The proposed rule change will make NYSE Amex rules compliant with the new requirements of Section 6(b)(10) by prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares with respect to any matter on executive compensation.[13]

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[14]

The Commission notes that NYSE Amex's new rules prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act, as well as any other matter concerning executive compensation, and has been drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The proposed rule language also specifically states that a broker vote on any executive compensation matter would not be permitted even if it would otherwise qualify for an exception from any item under NYSE Amex Rule 452 and corresponding Section 723 of the Company Guide. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

The Commission also notes that the Exchange will replace the text of Amex Rule 577 with Rule 452 NYSE Amex and corresponding Section 723 of the Company Guide by cross-reference. The Exchange has represented that the requirements of NYSE Amex Rule 577 are duplicative of Rule 452—NYSE Amex Equities and Section 723 of the

[9] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(10).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* S. Rep. No. 111–176, at 136 (2010).

[13] As noted above, Section 6(b)(10) also prohibits broker voting for director elections, except for uncontested director elections of registered investment companies, and also ''any other significant matter, as determined by the Commission, by rule.'' NYSE Amex already prohibits broker voting in director elections except for uncontested director elections for registered investment companies. *See* NYSE Amex Rule 452.11(19) and corresponding Section 723 of the Company Guide. As to other matters, the Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect NYSE Amex to adopt coordinating rules promptly to comply with the statute.

[14] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

Company Guide. Accordingly, the Commission believes that the proposed change should avoid potential confusion associated with having duplicative rules and is therefore, consistent with Section 6 of the Act.

Finally, the Commission notes that the change to reflect that NYSE Amex rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of NYSE Amex proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the NYSE Amex's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act by ensuring that brokers, holding shares on behalf of beneficial owners, are not voting uninstructed shares on matters relating to executive compensation, which should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register.** Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform NYSE Amex rules to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.[16]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEAmex–2011–97) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33045 Filed 12–23–11; 8:45 am]

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[15] 15 U.S.C. 78s(b)(2).

[16] *See* NYSE Rule 452, Securities Exchange Act Release No. 34–62874 (September 9, 2010), 75 FR 56152 (September 15, 2010) (SR–NYSE–2010–59).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66013; File No. SR–NASDAQ–2011–146]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Modify Rule 7034 Regarding Low Latency Network Connections

December 20, 2011.

I. Introduction

On October 31, 2011, the NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Exchange Rule 7034 entitled ''Co-Location Services'' to establish a program for offering low latency network connections and to establish the initial fees for such connections. The Exchange also proposed administrative modifications to Exchange Rule 7034. The proposed rule change was published for comment in the **Federal Register** on November 10, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to modify Exchange Rule 7034, which governs the Exchange's program for co-location services, to offer new options for low latency network telecommunication connections and to establish the fees for such connections. As its initial offering, the Exchange proposed to offer point-to-point telecommunication connectivity from the co-location facility to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago.[4]

According to the Exchange, the enhanced point-to-point connectivity would provide the Exchange's co-location customers with the opportunity to obtain low latency network connectivity with greater ease than is currently the case, and at a competitive price.[5] The Exchange represented that co-location customers currently obtain similar services by negotiating fees, obtaining service level agreements, and executing service agreements directly with approved telecommunication carriers, and that such co-location customers are currently charged a monthly negotiated fee by the telecommunications carrier in addition to a cross connection fee by the Exchange.[6] The Exchange represented that for its low latency network connection services, it would obtain wholesale rates from the carriers and then charge a markup to compensate the Exchange for its efforts to negotiate and establish the arrangement, for integrating the connectivity into the Exchange co-location connectivity offering, and for administrative costs associated with establishing and maintaining each new connection.[7]

According to the Exchange, co-location customers would have the opportunity to request these new low latency network telecommunication connections through the same process used to request a new co-located cabinet and other co-location services.[8] Co-location customers would retain the option of contracting directly with telecommunication providers, including either the providers that participate in the program, the current providers in the data center who have not yet agreed to participate, or any new carrier that is approved to install equipment in the Exchange's data center.[9]

The Exchange proposed one-time fees for the installation of telecommunication connectivity to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago, as well as per-month connectivity fees, at connectivity levels of 100MB, 1G, and 10G, respectively.[10] The Exchange represented that the fees were based on anticipated bandwidth necessary for the connections and distances to these select venues. The Exchange indicated its belief that the fees are reasonable, because they are similar and competitive with fees charged for similar services by other entities.[11]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65688 (November 4, 2011), 76 FR 70199 (''Notice'').

[4] *Id.* at 70199. The Exchange represented that it currently provides a cross connect from a client's cabinet to its requested telecommunication carrier's cabinet (known as a ''telco cross connect''). According to the Exchange, clients would have the option to use the enhanced point-to-point connectivity service to receive low latency network connectivity from the Exchange's data center to the client's chosen venue(s), in addition to the telco cross connect. These connections could be utilized to send market data to and receive orders from the chosen venues.

[5] *Id.* at 70200.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*