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27 March 2009

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-NYSE-2006-92; Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors and Codify Two Previously Published Interpretations That Do Not Permit Broker Discretionary Votes for Material Amendments to Investment Advisory Contracts

Dear Ms. Murphy:

The CFA Institute Centre for Financial Market Integrity (the “CFA Institute Centre”)¹ appreciates the opportunity to comment to the U.S. Securities and Exchange Commission (the “Commission”) on this New York Stock Exchange (the “Exchange”) proposal (the “Proposal”) relating to the elimination of broker discretionary voting.

Executive Summary.

We support the Exchange’s proposals “to eliminate broker discretionary voting for the election of directors,” except when the company is registered under the Investment Company Act of 1940 (the “1940 Act”). We also support the proposal to prevent brokers from voting proxies of 1940 Act companies on matters relating to contracts with new investment advisers, unless the brokers receive specific instructions from the beneficial owners of the shares.

¹ The CFA Institute Centre for Financial Market Integrity is a part of CFA Institute. With headquarters in Charlottesville, Virginia, USA, and regional offices in London, Hong Kong, and New York, CFA Institute is a global, not-for-profit professional association of more than 94,900 financial analysts, portfolio managers, and other investment professionals in 131 countries and territories, of whom 83,200 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 136 member societies in 57 countries and territories.

Discussion

Broker Discretionary Voting. We have expressed concern in recent years that resolution of this issue is long overdue, so we applaud the Commission's actions to address it now. Specifically, the Centre sent a 31 March 2008 letter to the Chair of the NYSE Proxy Working Group² (the "Working Group") urging an expeditious resolution of the uncertainty surrounding the scope of Rule 452, particularly as it related to the application of uninstructed votes in the context of director elections. We also met with SEC staff in February 2008³ and June 2008⁴ to urge a prompt resolution of issues surrounding Rule 452.

In general, we support the Working Group's proposals as an important step toward improved accountability for board members. Currently, broker discretionary voting provides boards and shareowners with a false sense of support for individual board members and for slates of board members. This is because brokers typically voted in support of the incumbent board's suggestions, thus giving the impression that greater shareowner support toward an individual or a slate of board members than might have been the case without the broker discretionary votes. By classifying board elections as "non-routine," however, the proposal puts board member elections in a category that does not permit brokers to vote without instructions from the beneficial owners.

We strongly support this proposal.

Exemption for 1940 Act Firms. The Working Group proposes to provide an exemption from this rule on broker discretionary votes to board elections at firms that are registered under the 1940 Act. As noted in the proposals, the 1940 Act already provides additional shareowner protections that are not available to shareowners of firms that are not covered by the act. Moreover, the Proposal notes that these firms tend to have higher proportions of retail investors than other companies, and already "have a high number of re-solicitations and adjournments of shareholder meetings when there are non-routine items on the agenda."⁵ Based on this information, we concur that this is the best course for the shareowners of such funds.

Non-Routine Votes for 1940 Act Firms. The Working Group also proposed to prevent brokers from voting shares without shareowner direction on matters relating to material changes to investment advisory contracts for 1940 Act firms, including contracts for new investment advisers. We strongly support this proposal.

² See 31 March 2008, Letter from Kurt N. Schacht, CFA, to Larry Sonsini, Chair, NYSE Proxy Working Group. <http://www.cfainstitute.org/centre/topics/comment/2008/080331.html>.

³ 7 February 2008 Meeting with Robert Colby, Deputy Director, Division of Training and Markets, Marlon Paz, Senior Counsel to the Director, Division of Trading and Market Regulation.

⁴ 25 June 2008 Meeting with Robert Colby, Deputy Director, Division of Trading and Markets.

⁵ See the Proposal, footnote 9. <http://www.sec.gov/rules/sro/nyse/2009/34-59464.pdf>.



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Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or James C. Allen, CFA at james.allen@cfainstitute.org or 434.951.5558.

Sincerely,

/S/Kurt N. Schacht

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