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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2026 - * 008

Amendment No. (req. for Amendments *)

Filing by Texas 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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

The Exchange proposes to amend Rule 13.003 related to proxy voting

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 * Kyle Last Name * Murray

Title * Deputy General Counsel

E-mail * kyle.murray@txse.com

Telephone * (214) 838-6038 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Texas Stock Exchange LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/27/2026

(Title *)

By Kyle Murray

Deputy General Counsel

(Name *)

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

KYLE PATRICK MURRAY
Digitally signed by KYLE PATRICK MURRAY
Date: 2026.05.27 17:00:08 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-TXSE-2026-008 (Uninstructed Sha

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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SR-TXSE-2026-008 (Uninstructed Sha

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 Advanced Notice by Clearing Agencies *

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SR-TXSE-2026-008 (Uninstructed Sha

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 2- Notices, Written Comments, Transcripts, Other Communications

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SR-TXSE-2026-008 (Uninstructed Sha

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

SR-TXSE-2026-008 (Uninstructed Sha

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 Sent As Paper Document

Exhibit 4 - Marked Copies

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SR-TXSE-2026-008 (Uninstructed Sha

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

Add Remove View

SR-TXSE-2026-008 (Uninstructed Sha

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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SR-TXSE-2026-008 (Uninstructed Sha

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 (the “Act”),¹ and Rule 19b-4 thereunder,² Texas Stock Exchange LLC (the “Exchange” or “TXSE”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Rule 13.003 related to proxy voting, as further described below. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Exchange Board”). Exchange staff will advise the Exchange Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

(b) Please refer questions and comments on the proposed rule change to Jeff Brown, General Counsel and Corporate Secretary, (214) 612-0261, or Kyle Murray, Deputy General Counsel, (214) 838-6038.

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

(a) Purpose

The Exchange proposes to amend Rule 13.003 to establish a mandatory process for the proportional allocation and voting of uninstructed shares held by Members of the Exchange on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

behalf of beneficial owners of TXSE-listed equity securities.³ Specifically, the proposed rule would require a Member to vote uninstructed shares at shareholder meetings and to allocate votes on each proposal in proportion to voting instructions received from beneficial owners for whom such Member holds shares in the applicable TXSE-listed security, subject to the exclusions and methodology set forth in the proposed rule.

The proposed rule reflects the principle that voting outcomes on matters up for a vote at TXSE-listed companies should be determined by the voting instructions of participating beneficial owners, with such instructions applied uniformly to the voting of uninstructed shares for every matter submitted to a shareholder vote. By replacing broker discretionary voting with a formula-driven allocation tied to instructions actually submitted, the proposed rule eliminates the exercise of broker discretion over shares in which the broker has no economic interest and also eliminates the inconsistent and proposal-dependent treatment of uninstructed shares produced by the framework currently in place in the market, while preserving all existing shareholder voting rights.

Overview

Existing TXSE Rule 13.003(b) established the baseline rule that a Member may not give a proxy to vote stock registered in its name unless the Member is the (i) beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is follow. Existing TXSE Rule 13.003(c) separately prohibits discretionary voting on director

³ As provided in proposed Rule 13.003(c), any reference to securities or companies listed on TXSE in this proposal is referring to securities or companies with their primary listing on TXSE and is not referring to a dually-listed security with its primary listing on another national securities exchange.

elections (except for uncontested director elections of any investment company registered under the Investment Company Act of 1940), executive compensation, and other significant matters. Accordingly, for matters outside the prohibition of 13.003(c), the treatment of uninstructed shares under existing TXSE rules is generally informed by the rules of other national securities exchanges or associations the Member is permitted to follow, including NYSE Rule 452.

NYSE Rule 452 enumerates specific instances in which a NYSE member organization may not vote without customer instructions and lays out factors for determining whether a matter is one in which a NYSE member organization may vote without customer instructions. For matters not specifically enumerated, NYSE Regulation determines whether broker discretionary voting is permitted on a case-by-case basis. In practice, these categories are generally referred to as “routine” (where the member organization may vote without customer instructions) and “non-routine” (where the member organization may not vote without customer instructions).

The Commission has previously determined that voting outcomes should be determined by parties with an economic interest in the issuer and approved limits on broker discretionary voting. In 2009, the Commission approved amendments to NYSE Rule 452 that eliminated broker discretionary voting in the election of directors, whether contested or uncontested.⁴ The Commission reasoned that the election of directors is "not a 'routine' issue for either the corporation or the shareholders" but rather "a key event in the operation and direction of the corporation and the shareholders' exercise of their rights and interests as the owners of the corporation," and that voting on matters as critical as the election of directors should be "determined by those with an economic interest in the company . . . rather than the broker who

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

has no such economic interest.”⁵ The 2009 amendments were further extended in 2010, when the NYSE codified the prohibition on broker discretionary voting for matters relating to executive compensation in order to implement Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁶

Notwithstanding these reforms, NYSE Rule 452's underlying routine/non-routine framework remains in place for matters outside the scope of the 2009 and 2010 amendments. Uninstructed shares, which commonly include a significant retail component, can be voted at the discretion of brokers on routine matters, treated as broker non-votes on non-routine matters, or not represented at the meeting at all in certain circumstances.⁷ The treatment of a given uninstructed share depends on which matters happen to appear on the ballot and how each is classified. This structure can affect quorum determinations, the ability to achieve approval thresholds, and a lower relative influence of beneficial owners who hold shares in a manner that are subject to NYSE Rule 452.

The Exchange proposes to replace this framework for TXSE-listed securities with a uniform process for the proportional allocation of uninstructed shares. Under the proposed rule, a Member would submit uninstructed shares and allocate votes on each proposal in proportion to the voting instructions received from beneficial owners for whom the Member holds shares in the applicable TXSE-listed security. The allocation operates the same way for every matter submitted to a vote, regardless of who proposes the matter.

This approach has two structural consequences that distinguish it from the existing

⁵ See 2009 NYSE Approval Order, 74 FR at 33300.

⁶ See Exchange Act Release No. 62874 (Sept. 9, 2010), 75 FR 56152 (Sept. 15, 2010) (SR-NYSE-2010-59).

⁷ For example, where a broker submits a proxy for a routine matter but lacks authority to vote uninstructed shares on a non-routine matter at the same meeting, those uninstructed shares may be counted for quorum but not voted on the non-routine matter. Where no routine matter is presented, uninstructed shares may not be represented at the meeting, creating uncertainty as to whether an issuer will attain a quorum.

framework. First, the proposed rule eliminates broker discretionary voting entirely. The Member does not vote uninstructed shares according to its own judgment, the recommendations of management, or any other external input (other than how participating beneficial owners have instructed the Covered Member); the Covered Member applies a prescribed formula based exclusively on instructions submitted by participating beneficial owners. In 2009, the Commission expressed its view that voting outcomes should be determined by parties with an economic interest in the issuer, not by brokers who have no such interest. The proposed rule applies that principle to every matter submitted to a shareholder vote at TXSE-listed companies. Second, the proposed rule eliminates the inconsistent and proposal-dependent treatment of uninstructed shares produced by NYSE Rule 452's routine/non-routine framework. Every matter on every ballot is treated the same way, ensuring that the treatment of uninstructed shares depends on the preferences of participating beneficial owners rather than the incidental composition of the meeting agenda.

As further described below, the proposed rule would not alter any beneficial owner's right to vote, abstain, withhold where applicable, or otherwise provide voting instructions. It is neutral as to voting choice: it does not favor management, opposition, or any shareholder proponent; it applies the same formula based solely on the voting instructions submitted by participating beneficial owners.

Existing TXSE Rule 13.003

TXSE Rule 13.003(b) currently prohibits a Member from giving a proxy to vote stock registered in its name, unless: (i) the Member is the beneficial owner of such stock; (ii) the proxy is given pursuant to the written instructions of the beneficial owner; or (iii) the proxy is given pursuant to the rules of any national securities exchange or association of which it is a member

provided that the records of the Member clearly indicate the procedure it is following. As such, the treatment of uninstructed shares under the current framework generally turns on the discretionary voting rules applicable to the Member, including NYSE Rule 452.⁸

Existing Rule 13.003(c) separately prohibits a Member that is not the beneficial owner of a security from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors (other than for a vote with respect to 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 unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner. The proposed rule retains the restriction on discretionary voting in existing Rule 13.003(c), while requiring the ministerial proportional allocation outlined in the proposed rule.

Description of the Proposed Rule

Proposed Rule 13.003(c) would apply to a Member that holds shares of an equity security, with a primary listing on the Exchange, on behalf of a beneficial owner and has not received voting instructions from that beneficial owner as of the applicable instruction cutoff, referred to in the proposed rule as the “Calculation Date,” subject to the exclusions set forth in the proposed rule. A Member subject to proposed Rule 13.003(c) is referred to in the proposed rule as a “Covered Member.” The proposed rule would require the Covered Member to vote uninstructed shares at the shareholder meeting and to allocate votes on each proposal in the same

⁸ FINRA Rule 2251 similarly limits the circumstances under which FINRA members may vote proxies without instructions from beneficial owners and permits a member to give a proxy pursuant to the rules of a national securities exchange of which it is a member. Nasdaq General 9, Section 6 provides that Nasdaq members shall comply with FINRA Rule 2251 as if it were part of Nasdaq’s rules. See FINRA Rule 2251(b)(3); Nasdaq General 9, Section 6(a).

proportion as the instructions received from participating beneficial owners for whom the Member holds shares in the applicable security.

Proposed Rule 13.003(c)(1) provides that the Covered Member shall submit a proxy designating the Uninstructed Shares as present at such meeting, regardless of whether any matter on the ballot for such meeting would otherwise qualify as a routine matter permitting discretionary voting under the rules of any other national securities exchange or association of which such Covered Member is a member. Submission of a proxy for purposes of representation at the meeting shall not be deemed the exercise of discretionary voting authority.

Proposed Rule 13.003(c)(2) provides that a Covered Member shall vote uninstructed shares on each proposal by casting votes FOR, AGAINST, and ABSTAINING, or such other voting categories as are available for the applicable proposal, in the same proportion as the aggregate voting instructions received by the Covered Member from beneficial owners of shares of such issuer held by the Covered Member who have submitted voting instructions with respect to such proposal. Proposed Rule 13.003(c)(2)(A) provides that if the Covered Member has received no voting instructions from any beneficial owner with respect to a particular proposal, the Covered Member shall vote all Uninstructed Shares as ABSTAINING, or in the applicable non-directional category available for such proposal, such as WITHHOLD.

Proposed Rule 13.003(c)(2)(B) provides that the proposed proportional allocation requirement would not apply to shares held or voted by a Covered Member in any capacity described in Rule 13.003(e), including shares voted by a Covered Member acting as an executor, administrator, guardian, trustee, or in a similar fiduciary capacity. The proposed requirement also would not apply to shares voted by a named ERISA Plan investment manager or by a designated investment adviser pursuant to Rule 13.003(e). Such shares also would be excluded from the

calculation of the instructed vote distribution.

Existing Rule 13.003(c) would be re-lettered as Rule 13.003(d). The Exchange proposes to retain the existing prohibition on a Member that is not the beneficial owner of a Section 12 security granting a proxy to vote the security in connection with director elections, executive compensation, or any other significant matter determined by the Commission unless the beneficial owner has instructed the Member to vote the proxy in accordance with the beneficial owner's instructions. This prohibition would continue to apply to securities and accounts outside the scope of proposed Rule 13.003(c), including securities not listed on the Exchange and shares otherwise excluded from the proposed proportional allocation requirement. Proposed Rule 13.003(d) would also clarify that the mandatory proportional allocation required under proposed Rule 13.003(c) does not constitute the giving of a proxy to vote at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule or Exchange Act Section 6(b)(10) because the Covered Member exercises no judgment, preference, or discretion in determining the votes cast for the Uninstructed Shares.

Proposed Rule 13.003(c)(3) provides that the proportional allocation required under paragraph (c)(2) of this TXSE Rule constitutes a mandatory ministerial obligation of the Covered Member. In executing such allocation, the Covered Member exercises no judgment, preference, or discretion as to how Uninstructed Shares are voted; the allocation is determined solely by application of the formula prescribed by such paragraph (c)(2) and Interpretation and Policy .02 to this TXSE Rule without modification or substitution by the Covered Member. The proportional allocation obligation under this paragraph (c) does not constitute the giving of a proxy to vote at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule or Exchange Act Section 6(b)(10).

Proposed Rule 13.003(c)(4) would require a Covered Member to maintain records of the proportional allocation methodology applied pursuant to proposed Rule 13.003(c)(2) in accordance with Exchange Act Rule 17a-4.

Proposed Interpretation and Policy .02 (a) would add the following definitions: (1) "Calculation Date" means the date and time by which the Covered Member customarily closes receipt of voting instructions from beneficial owners in connection with a shareholder meeting of the applicable issuer, in accordance with the Covered Member's standard proxy processing practices as applied to meetings of other issuers whose securities the Covered Member holds in the same capacity. The Calculation Date shall be no later than the date the Covered Member submits its final vote tally to the meeting tabulator. If a shareholder meeting is adjourned and reconvened, a new Calculation Date shall apply based on the reconvened meeting date in accordance with the same standard practices; (2) "Category Percentage" means, for each available voting category on a proposal, the quotient obtained by dividing the number of Total Instructed Shares allocated to such category by the Total Instructed Shares; (3) "Covered Member" has the meaning set forth in Rule 13.003(c) of this TXSE Rule; (4) "Instructed Vote Distribution" has the meaning set forth in Rule 13.003(c)(2) of this TXSE Rule; (5) "Total Instructed Shares" means, for a given proposal, the aggregate number of shares of the applicable issuer held in the Covered Member's custody for which voting instructions have been received and allocated to a voting category as of the Calculation Date, excluding shares described in Rule 13.003(c)(2)(B); and (6) "Uninstructed Shares" has the meaning set forth in Rule 13.003(c) of this TXSE Rule.

Proposed Interpretation and Policy .02 (b) would establish the methodology for calculating the proportional allocation of uninstructed shares. The calculation would be

performed separately for each proposal on the ballot. A beneficial owner that provides voting instructions on one proposal but not another would be included in the instructed vote distribution only for the proposal on which instructions were received, and the shares would be treated as Uninstructed Shares for each proposal where voting instructions were not submitted. Any fractional allocation resulting from the allocation formula would be rounded down to the nearest whole share, and any remainder shares would be allocated to ABSTAINING.

Proposed Interpretation and Policy .02 (c) provides that the Instructed Vote Distribution and Total Instructed Shares shall be calculated separately for each proposal on the ballot. A beneficial owner who has submitted voting instructions with respect to one or more proposals but not all proposals shall be included in the Total Instructed Shares for each proposal on which instructions were received, and the shares held for such beneficial owner shall be treated as Uninstructed Shares for each proposal on which no instructions were received.

Proposed Interpretation and Policy .02 (d) provides that Where the voting options for a proposal include WITHHOLD AUTHORITY in lieu of, or in addition to, AGAINST, including in connection with director elections conducted under a plurality voting standard, the proportional allocation described in paragraph (b) of this Interpretation and Policy shall be applied to each available voting category in the same manner, substituting WITHHOLD AUTHORITY for AGAINST, where applicable. Any remainder shares shall be allocated to ABSTAINING, or to WITHHOLD AUTHORITY if ABSTAINING is not an available voting category for such proposal.

The Exchange is also proposing to make certain corresponding numbering changes to Rule 13.003 in order to accommodate the proposed changes.

Examples

The following examples illustrate the operation of proposed Rule 13.003(c) and proposed Interpretation and Policy .02.

Example 1: A Covered Member holds 100 shares of an Exchange-listed security on behalf of beneficial owners. As of the Calculation Date, the Covered Member has received voting instructions for 60 shares and has received no voting instructions for the remaining 40 shares. The allocation would be calculated as follows:

Voting Category	Instructed Shares	Instructed Vote Distribution	Allocated Uninstructed Shares
FOR	36	60%	24
AGAINST	18	30%	12
ABSTAINING	6	10%	4
Total	60	100%	40

Example 2: A Covered Member holds 100 shares of an Exchange-listed security on behalf of beneficial owners. As of the Calculation Date, the Covered Member has received voting instructions for 3 shares and has received no voting instructions for the remaining 97 shares. The allocation would be calculated as follows:

Voting Category	Instructed Shares	Instructed Vote Distribution	Initial Allocation of Uninstructed Shares	Rounded Allocation
FOR	1	33.33%	32.33	32
AGAINST	1	33.33%	32.33	32
ABSTAINING	1	33.33%	32.33	33
Total	3	100%	97	97

Background and History of Broker Discretionary Voting

The proposed rule should be understood against the historical development of broker discretionary voting and the modern street-name holding system. The Commission has described NYSE's broker-discretionary voting rule as dating back to 1937, reflecting a long-standing

accommodation to the intermediated ownership structure. In the street-name holding system, the broker, bank, or nominee generally appears as the shareholder of record, while the underlying investor with economic ownership is the beneficial owner.⁹

Broker discretionary voting predates the modern street-name ownership system, but its practical significance increased as share ownership became increasingly intermediated. In the 2009 NYSE Approval Order, the Commission cited data indicating that in 1976, approximately 71 percent of securities were held directly by record holders and approximately 29 percent through securities intermediaries. By contrast, the Commission cited data showing that, by the end of 2002, DTC had on deposit approximately 84 percent of shares issued by domestic NYSE-listed companies and approximately 88 percent of shares issued by domestic Nasdaq-listed companies.¹⁰ As the proportion of street-name holdings increased, the treatment of uninstructed shares by intermediaries became more significant to shareholder meeting mechanics. At the same time, the scope of matters treated as eligible for broker discretionary voting continued to narrow.

The modern narrowing of broker discretionary voting began when NYSE established its Proxy Working Group in 2005 to review the NYSE rules regulating the proxy voting process, with a focus on NYSE Rule 452. The Proxy Working Group recommended that director elections should no longer be treated as routine and that brokers should no longer be permitted to vote shares for beneficial owners who did not provide specific voting instructions. In making that recommendation, the Proxy Working Group also recognized that the proposed change could significantly affect the director election process, including by increasing the costs of uncontested

⁹ See 2009 NYSE Approval Order, 74 FR at 33293-33294.

¹⁰ See 2009 NYSE Approval Order, 74 FR at 33294 n.11 (citing Securities Exchange Act Release No. 50758 (November 30, 2004), 69 FR 70852 (December 7, 2004)) (noting that at the end of 2002, DTC had on deposit approximately 84% of shares issued by domestic NYSE-listed companies and approximately 88% of shares issued by domestic Nasdaq-listed companies).

elections and potentially increasing the influence of proxy advisory firms, special-interest groups or others with a particular agenda to challenge an incumbent board at the expense of smaller shareholders.¹¹

NYSE filed SR-NYSE-2006-92 in October 2006. After several amendments, the Commission approved the proposed rule change in the 2009 NYSE Approval Order, eliminating broker discretionary voting for director elections at shareholder meetings held on or after January 1, 2010, subject to the investment company exception. The Commission received 153 comment letters from 137 commenters on the proposal.¹²

The Commission's approval order emphasized the importance of shareholder enfranchisement and the relationship between voting authority and economic interest. In approving the NYSE proposal, the Commission stated that having shareholders with an economic interest in the company vote the shares furthers the goal of enfranchising shareholders as opposed to brokers without such economic interest.¹³ At the same time, the comment record reflected concerns regarding quorum, solicitation costs, retail participation, proxy-advisor influence, and related aspects of the broader proxy voting process.¹⁴ Two Commissioners dissented, based in part on their concerns that eliminating broker discretionary voting could affect retail shareholder participation, quorum, solicitation costs, and the relative influence of third parties.¹⁵

¹¹ See Securities Exchange Act Release No. 59464 (February 26, 2009), 74 FR 9864 (March 6, 2009) (SR-NYSE-2006-92) (summarizing the Proxy Working Group report).

¹² See 2009 NYSE Approval Order, 74 FR at 33293 (noting the Commission received 153 comment letters from 137 commenters).

¹³ See 2009 NYSE Approval Order, 74 FR at 33296 (noting that voting should be connected to those with economic interest).

¹⁴ See 2009 NYSE Approval Order, 74 FR at 33296-33298 (summarizing comment record concerns regarding quorum, solicitation costs, retail participation, and the influence of third parties).

¹⁵ See Statement of Commissioner Troy A. Paredes at Open Meeting, Statement at SEC Open Meeting (July 1, 2009) ("Paredes Statement"), available at <https://www.sec.gov/news/speech/2009/spch070109tap.htm>;

2009 NYSE Rule 452 Comment Record on Proportional Voting

The comment file for the 2009 NYSE Rule 452 amendments also demonstrates that proportional voting was a known and seriously discussed alternative to both broker discretionary voting and the complete exclusion of uninstructed shares. For example, the NYSE Proxy Working Group stated in its 2009 comment letter that it had discussed and considered proportional voting and that, following publication of its 2006 report, the Securities Industry and Financial Markets Association (“SIFMA”) issued a best-practices memo suggesting uninstructed retail shares be voted in proportion to shares voted by other retail shareholders rather than at the broker's discretion.¹⁶ The PWG Comment Letter further acknowledged that Broadridge data suggested proportional voting had a significant impact on companies' ability to attain a quorum, even if it had a limited impact on the outcome of director elections.

Other commenters also addressed proportional voting, with several commenters supporting proportional voting as an alternative to the NYSE proposal, arguing that it could better reflect retail shareholder sentiment and reduce concerns about quorum and solicitation.¹⁷ Other commenters opposed proportional voting, raising concerns about vote integrity, disproportionate influence, and inconsistency with the principle commonly described as “one

Statement of Commissioner Kathleen L. Casey at Open Meeting, Statement at SEC Open Meeting (July 1, 2009) ("Casey Statement"), available at <https://www.sec.gov/news/speech/2009/spch070109klc.htm>.

¹⁶ Letter from Larry W. Sonsini, Chairman, Proxy Working Group of the New York Stock Exchange, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 25, 2009, SR-NYSE-2006-92 ("PWG Comment Letter"), available at <https://www.sec.gov/comments/sr-nyse-2006-92/nyse200692-66.pdf>.

¹⁷ See, e.g., 2009 NYSE Approval Order, 74 FR at 33305 nn.115-116 (noting commenters that endorsed proportional voting in general or supported it as an alternative to the NYSE proposal, including the comment letter from R. Scott McMillen of the Charels Schwab Corporation (the “Schwab Letter”) available: <https://www.sec.gov/comments/sr-nyse-2006-92/nyse200692-120.pdf> (stating proportional voting is "a better first step" than eliminating discretionary broker voting), the PWG Comment Letter (expressing no objection to SIFMA members implementing proportional voting), and the Broadridge Letter); see also id. at 33305 n.119 (noting commenters that stated proportional voting could provide a more accurate reflection of retail shareholder sentiment than eliminating broker discretionary voting).

share, one vote.”¹⁸

In its approval of the 2009 NYSE Approval Order, the Commission also acknowledged concerns that proportional voting could have a distortive impact depending on how it was implemented, including whether the calculation reflected retail-only votes or a broader pool of account holders. At the same time, the Commission did not conclude that proportional voting was categorically inconsistent with the Act. Rather, the Commission stated that the existence of other reasonable alternatives did not render the NYSE proposal inconsistent with Section 6(b)(5).¹⁹

The Exchange’s proposal to amend Rule 13.003 addresses the implementation concerns reflected in the 2009 NYSE Approval Order. Unlike voluntary or broker-specific proportional voting practices discussed in 2009, proposed Rule 13.003(c) would prescribe a uniform methodology, apply on a proposal-by-proposal basis, exclude shares held or voted pursuant to fiduciary, advisory, ERISA, or other discretionary authority, and require records of the proportional allocation methodology.

Dodd-Frank Section 957 and Exchange Act Section 6(b)(10)

Following the 2009 amendments, the scope of broker discretionary voting continued to narrow. Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act directed national securities exchanges to adopt rules prohibiting members from voting

¹⁸ See, e.g., 2009 NYSE Approval Order, 74 FR at 33305-33306 nn.123-127 (noting commenters opposing proportional voting on grounds including vote integrity, disproportionate influence, and inconsistency with the principle commonly described as "one share, one vote").

¹⁹ See 2009 NYSE Approval Order, 74 FR at 33302 (stating that "proportional voting could have a distortive impact, depending on how it is implemented" and that "the fact that there may be other reasonable alternatives does not mean that the rule change proposed by the NYSE is inconsistent with Section 6(b)(5) of the Act"); see also id. at 33302 n.129 (noting the Commission's specific implementation concern that proportional voting calculations varied depending on whether they reflected retail-only votes or a broader pool of account holders).

uninstructed shares in connection with director elections, executive compensation, and other significant matters as determined by the Commission.²⁰ Existing Rule 13.003(c) of the Exchange's rules reflects this prohibition and is retained in the proposed rule change, re-lettered as Rule 13.003(d).

The Senate Report accompanying Section 957 framed the relevant policy as preventing broker preferences from affecting the outcome of votes. The report states that final vote tallies should reflect the wishes of the beneficial owners of the stock, not those of the broker holding the shares.²¹

The Commission repeated that principle in approving the rule changes that NYSE and Nasdaq proposed to address Section 957 of the Dodd-Frank Act. In those orders, the Commission quoted the Senate Report and concluded that NYSE's and Nasdaq's proposals furthered investor protection and the public interest by assuring that votes on matters covered by Section 6(b)(10) are made by those with an economic interest in the company, rather than by a broker without such economic interest.²²

The Exchange recognizes that Section 6(b)(10) of the Exchange Act requires the rules of a national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection

²⁰ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 957, 124 Stat. 1376, 1906 (2010), codified at Exchange Act Section 6(b)(10), 15 U.S.C. § 78f(b)(10).

²¹ S. Rep. No. 111-176, at 136 (2010) ("Senate Report").

²² See Securities Exchange Act Release No. 62874 (September 9, 2010), 75 FR 56154-57 (SR-NYSE-2010-59) ("NYSE Dodd-Frank Order") (approving NYSE's conforming amendment to Rule 452 to implement Section 6(b)(10)); Securities Exchange Act Release No. 62992 (September 24, 2010), 75 FR 60844-46 (October 1, 2010) (SR-Nasdaq-2010-114) ("Nasdaq Dodd-Frank Order") (approving Nasdaq Rule 2251 conforming amendment, stating that "the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer . . . and 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").

with a shareholder vote on specified matters, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The proposed rule is designed to address that statutory concern by eliminating Member discretion. A Covered Member would not select a voting outcome, apply a house voting policy, follow management, or follow a third-party recommendation. Instead, the Covered Member would be required to apply a mandatory formula derived solely from voting instructions submitted by participating beneficial owners.

Existing Rule 13.003(b)(iii) permits a Member to give a proxy pursuant to the rules of another national securities exchange or association of which the Member is a member. Proposed Rule 13.003(c) would create a TXSE-specific requirement for covered Exchange-listed securities and therefore applies notwithstanding Rule 13.003(b)(iii). The Exchange is not proposing to eliminate Rule 13.003(b)(iii), as that provision would continue to apply outside the scope of proposed Rule 13.003(c). Existing Rule 13.003(c), re-lettered as Rule 13.003(d), would retain the Exchange's prohibition on discretionary voting for matters covered by Exchange Act Section 6(b)(10). The proposed amendment to re-lettered Rule 13.003(d) clarifies that the mandatory proportional allocation required by proposed Rule 13.003(c) is not an exercise of Member discretion.

This history informs the proposed rule. The proposed rule would replace Member discretion with a mandatory, formula-driven allocation based on voting instructions submitted by participating beneficial owners. In doing so, the proposed rule is designed to reaffirm the policy that vote treatment should be derived from beneficial-owner preferences and not from Member judgment or preference.

Policy Considerations

The Exchange believes the proposed rule advances the policy objectives underlying the Act and is consistent with both the principles articulated by the Commission in the 2009 NYSE Approval Order and by Congress in Section 957 of the Dodd-Frank Act. Depending on the proposals on the ballot and their classification under NYSE Rule 452, the absence of voting instructions from a beneficial owner may affect the determination of a quorum, increase the effective approval threshold for a proposal, reduce the relative influence of beneficial owners who submit voting instructions, or result in shares not being represented at the meeting at all. The treatment of an uninstructed share is therefore not neutral, it is determined by the incidental composition of the meeting agenda and by classification decisions made by another self-regulatory organization on a case-by-case basis. Compounding this concern, the routine/non-routine classification does not consistently track the practical or economic significance of the proposal to beneficial owners and matters with meaningful economic consequences, including reverse stock splits and increases in authorized common stock for general corporate purposes, some of which may be treated as routine and therefore subject to broker discretionary voting.

The proposed rule addresses these concerns by replacing proposal-dependent treatment with a uniform methodology that applies the same formula to every matter submitted to a shareholder vote and that is derived solely from the voting instructions submitted by participating beneficial owners. In doing so, the proposed rule eliminates Member discretion in the voting of uninstructed shares. Rather than voting in accordance with its own judgment, the recommendations of the issuer's management, the recommendations of any third party, or any house voting policy, a Covered Member would apply a prescribed formula derived solely from voting instructions submitted by participating beneficial owners. In this respect, the proposed rule advances the principle that the outcome of shareholder votes should be determined by the

beneficial owners rather than by intermediaries. The proposed rule applies that principle uniformly to every matter submitted to a shareholder vote on TXSE-listed securities, including matters that remain eligible for broker discretionary voting under the current framework, and reflects an approach that is not novel: proportional voting was identified as a known alternative in the 2009 NYSE Rule 452 comment record, and certain broker-dealers have voluntarily applied proportional methodologies when exercising discretionary authority on routine matters.²³

The proposed rule is neutral as to voting choice. It does not favor management, opposition, or any shareholder proponent, and does not guarantee support for, or opposition to, any board recommendation. The Exchange acknowledges that the proposed rule will have some effect on voting outcomes, as any rule governing the treatment of uninstructed shares necessarily does. The proposed rule is, however, structurally neutral as among the parties seeking to influence those outcomes. Nor does the proposed rule impair the rights of any shareholder or shareholder proponent: it does not limit the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions, and it does not eliminate or restrict shareholder proposals or the rights of any party to present matters to a vote. The proposed rule preserves the distinction between affirmative silence (an instruction to abstain or, in the case of director elections, to withhold) and non-response, treating the former as an instruction reflected in the allocation calculation in the same manner as a vote FOR or AGAINST, and thereby prevents the dilution of the influence of beneficial owners who have engaged with the proxy materials.

The proposed rule is also consistent with the policy reflected in Section 957 of the Dodd-Frank Act, which directed national securities exchanges to adopt rules prohibiting members from voting uninstructed shares in connection with director elections, executive compensation, and

²³ See Schwab Letter.

other significant matters as determined by the Commission. The Senate Report accompanying Section 957 framed the relevant policy as ensuring that final vote tallies reflect the wishes of the beneficial owners of the stock rather than those of the broker holding the shares. The proposed rule reaffirms that policy and extends its underlying principle to the matters that remain eligible for broker discretionary voting under the current framework, including ratification of auditors, certain stock splits and reverse stock splits, increases in authorized common stock, adjournments, and a limited number of other matters. The Exchange notes that Section 957 does not prescribe how uninstructed shares should or should not be treated outside those covered matters, and notwithstanding the scope of its specific prohibitions, the proposed rule operates within the latitude left by the statute. By eliminating the variation in voluntary proportional voting practices that has developed under the current framework and reducing reliance on proposal-by-proposal classification determinations by another self-regulatory organization, the proposed rule provides a uniform, transparent, and consistently applied approach to the treatment of uninstructed shares in TXSE-listed securities.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(10) of the Act,²⁶ which addresses the voting of proxies on behalf of beneficial owners by members of national securities exchanges.

The Exchange believes the proposed rule is consistent with Section 6(b)(5) because it replaces a proposal-dependent framework for the treatment of uninstructed shares with a uniform methodology that applies the same formula to every matter submitted to a shareholder vote. Under the current framework, the absence of voting instructions from a beneficial owner may, depending on the proposals on the ballot and their classification under NYSE Rule 452, affect the determination of a quorum, increase the effective approval threshold for a proposal, reduce the relative influence of beneficial owners who submit voting instructions, or result in shares not being represented at the meeting at all. The proposed rule removes these proposal-dependent effects by prescribing a single methodology that applies to every matter submitted to a vote and that is derived solely from the voting instructions submitted by participating beneficial owners. The Exchange believes that this uniform treatment promotes just and equitable principles of trade and removes impediments to a free and open market by ensuring that the treatment of uninstructed shares is determined by a transparent and consistently applied formula rather than by the composition of the meeting agenda and the classification decisions of another self-regulatory organization.

The Exchange further believes the proposed rule is consistent with Section 6(b)(5) because it protects investors and the public interest by eliminating a Covered Member discretion

²⁶ 15 U.S.C. 78f(b)(10).

in the voting of uninstructed shares and by ensuring that the voting instructions of participating beneficial owners are the only inputs to the allocation of a Covered Member. A Covered Member would not vote in accordance with its own judgment, the recommendations of the issuer's management, the recommendations of any third party, or any house voting policy. The Covered Member would apply a prescribed formula derived solely from voting instructions submitted by participating beneficial owners. In this respect, the proposed rule advances the principle, articulated by the Commission in the 2009 NYSE Approval Order, that the outcome of shareholder votes should be determined by those with an economic interest in the issuer rather than by intermediaries without such an interest, and applies that principle uniformly to every matter submitted to a vote, including matters that remain eligible for broker discretionary voting under the current framework. The proposed rule is also neutral as to voting direction. It does not favor management, opposition, or any shareholder proponent, and does not guarantee support for, or opposition to, any board recommendation, rather, the allocation moves in the direction of the instructions submitted by participating beneficial owners. The proposed rule does not impair the rights of any shareholder or shareholder proponent, as it does not limit the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions, nor does it eliminate or restrict shareholder proposals or the rights of any party to present matters to a vote. The proposed rule preserves the distinction between affirmative silence (an instruction to abstain or, in the case of director elections, to withhold) and non-response, treating the former as an instruction reflected in the allocation calculation in the same manner as a vote FOR or AGAINST, and thereby prevents the dilution of the influence of beneficial owners who have engaged with the proxy materials.

The Exchange believes the proposed rule is consistent with Section 6(b)(10) because it

does not authorize Members that are not beneficial owners to exercise discretionary voting authority on the matters covered by that provision in the absence of beneficial-owner instructions. The Exchange is retaining the existing prohibition required by Section 6(b)(10) in re-lettered Rule 13.003(d), which carries forward the substance of existing Rule 13.003(c) without modification of its scope. The mandatory proportional allocation required by proposed Rule 13.003(c) is consistent with Section 6(b)(10) because it does not involve the exercise of Member discretion. A Covered Member would not select a voting outcome, apply a house voting policy, follow management, or follow a third-party recommendation, but would instead apply a mandatory formula derived exclusively from voting instructions submitted by participating beneficial owners.²⁷ The proposed rule expressly clarifies in re-lettered Rule 13.003(d) that the mandatory proportional allocation required under proposed Rule 13.003(c) does not constitute the granting of a proxy to vote at the Member's discretion because the Covered Member exercises no judgment, preference, or discretion in determining the votes cast for the uninstructed shares.

The Exchange further believes the proposed rule is consistent with the policy reflected in Section 957 of the Dodd-Frank Act, which directed national securities exchanges to adopt rules prohibiting members from voting uninstructed shares in connection with director elections, executive compensation, and other significant matters as determined by the Commission. The Senate Report accompanying Section 957 framed the relevant policy as ensuring that final vote tallies reflect the wishes of the beneficial owners of the stock rather than those of the broker holding the shares, and the Commission reiterated this principle in approving the NYSE and

²⁷ The Exchange notes that the Commission has previously approved proportional voting for auction rate preferred securities. See Securities Exchange Act Release No. 37015 (March 22, 1996), 61 FR 14183 (March 29, 1996) (SR-NYSE-96-02).

Nasdaq conforming rule amendments. The proposed rule reaffirms that policy and extends its underlying principle to the matters that remain eligible for broker discretionary voting under the current framework, including ratification of auditors, certain stock splits and reverse stock splits, increases in authorized common stock, adjournments, and a limited number of other matters. The Exchange notes that Section 957 does not prescribe how uninstructed shares should or should not be treated outside the scope of its specific prohibitions, and the proposed rule operates within the latitude left by the statute.

The Exchange acknowledges that the Commission considered proportional voting in the 2009 NYSE Rule 452 proceeding and did not adopt it at that time. The Commission did not, however, conclude that proportional voting was categorically inconsistent with the Act; rather, the Commission stated that the existence of other reasonable alternatives did not render the NYSE proposal inconsistent with Section 6(b)(5). The Exchange believes the proposed rule addresses the implementation concerns reflected in the comment record of that proceeding. Unlike the voluntary or broker-specific proportional voting practices discussed in 2009, proposed Rule 13.003(c) prescribes a uniform methodology, applies on a proposal-by-proposal basis, excludes shares held or voted pursuant to fiduciary, advisory, ERISA, or other discretionary authority, requires Covered Members to maintain records of the proportional allocation methodology applied, and operates within the prohibitions of Section 6(b)(10) by eliminating Member discretion entirely.

Finally, the Exchange believes that the proposed corresponding numbering changes are consistent with the Act because they make the Exchange's Rules more clear and understandable.

For these reasons, the Exchange believes that the proposed changes are consistent with the Act.

4. 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.

The proposed rule applies uniformly to all Members that hold shares of TXSE-listed equity securities on behalf of beneficial owners. All Covered Members are subject to the same proportional allocation methodology and the same recordkeeping requirements. The proposed rule does not advantage any Member or class of Members relative to any other, and it does not impose differential obligations based on Member size, business model, or customer composition. Accordingly, the Exchange does not believe the proposed rule imposes any burden on intramarket competition.

The proposed rule also does not impose any burden on intermarket competition. The proposed rule governs the conduct of TXSE Members in connection with the voting of uninstructed shares of TXSE-listed equity securities. Other exchanges may at any time choose to adopt this proposal, retain existing rules, or otherwise modify its own rules in this area. To the extent the proposed rule reflects a different approach to the treatment of uninstructed shares than the approach adopted by other national securities exchanges, the Exchange believes that such differentiation is consistent with the purposes of the Act and reflects appropriate competition among self-regulatory organizations in establishing the rules applicable to securities listed on their respective markets.

The Exchange does not believe the proposed rule imposes any burden on competition among issuers. The proposed rule applies uniformly to all TXSE-listed equity securities subject to its scope and does not distinguish among issuers based on size, industry, capital structure, or any other characteristic. The proposed rule does not alter the substantive rights of issuers,

shareholders, or shareholder proponents, and does not affect the ability of any issuer to submit any matter to a shareholder vote or the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions on any such matter.

For the foregoing reasons, 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. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Stockholders, Participants or Others

The Exchange 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)

Not applicable.

8. Proposed Rule Change Based on Rule 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: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-_____ ; File No. SR-TXSE-2026-008]

[Insert date]

Self-Regulatory Organizations; Texas Stock Exchange LLC; Notice of Filing of a Proposed Rule Change to Amend Rule 13.003 Related to Proxy Voting

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Texas Stock Exchange LLC (the “Exchange” or “TXSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.003 related to proxy voting, as further described below.

The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>) at the Exchange’s website (<https://txse.com/rule-filings>), and at the principal office of the Exchange.

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

The Exchange proposes to amend Rule 13.003 to establish a mandatory process for the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proportional allocation and voting of uninstructed shares held by Members of the Exchange on behalf of beneficial owners of TXSE-listed equity securities.³ Specifically, the proposed rule would require a Member to vote uninstructed shares at shareholder meetings and to allocate votes on each proposal in proportion to voting instructions received from beneficial owners for whom such Member holds shares in the applicable TXSE-listed security, subject to the exclusions and methodology set forth in the proposed rule.

The proposed rule reflects the principle that voting outcomes on matters up for a vote at TXSE-listed companies should be determined by the voting instructions of participating beneficial owners, with such instructions applied uniformly to the voting of uninstructed shares for every matter submitted to a shareholder vote. By replacing broker discretionary voting with a formula-driven allocation tied to instructions actually submitted, the proposed rule eliminates the exercise of broker discretion over shares in which the broker has no economic interest and also eliminates the inconsistent and proposal-dependent treatment of uninstructed shares produced by the framework currently in place in the market, while preserving all existing shareholder voting rights.

Overview

Existing TXSE Rule 13.003(b) established the baseline rule that a Member may not give a proxy to vote stock registered in its name unless the Member is the (i) beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is

³ As provided in proposed Rule 13.003(c), any reference to securities or companies listed on TXSE in this proposal is referring to securities or companies with their primary listing on TXSE and is not referring to a dually-listed security with its primary listing on another national securities exchange.

follow. Existing TXSE Rule 13.003(c) separately prohibits discretionary voting on director elections (except for uncontested director elections of any investment company registered under the Investment Company Act of 1940), executive compensation, and other significant matters. Accordingly, for matters outside the prohibition of 13.003(c), the treatment of uninstructed shares under existing TXSE rules is generally informed by the rules of other national securities exchanges or associations the Member is permitted to follow, including NYSE Rule 452.

NYSE Rule 452 enumerates specific instances in which a NYSE member organization may not vote without customer instructions and lays out factors for determining whether a matter is one in which a NYSE member organization may vote without customer instructions. For matters not specifically enumerated, NYSE Regulation determines whether broker discretionary voting is permitted on a case-by-case basis. In practice, these categories are generally referred to as “routine” (where the member organization may vote without customer instructions) and “non-routine” (where the member organization may not vote without customer instructions).

The Commission has previously determined that voting outcomes should be determined by parties with an economic interest in the issuer and approved limits on broker discretionary voting. In 2009, the Commission approved amendments to NYSE Rule 452 that eliminated broker discretionary voting in the election of directors, whether contested or uncontested.⁴ The Commission reasoned that the election of directors is "not a 'routine' issue for either the corporation or the shareholders" but rather "a key event in the operation and direction of the corporation and the shareholders' exercise of their rights and interests as the owners of the corporation," and that voting on matters as critical as the election of directors should be

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

"determined by those with an economic interest in the company . . . rather than the broker who has no such economic interest."⁵ The 2009 amendments were further extended in 2010, when the NYSE codified the prohibition on broker discretionary voting for matters relating to executive compensation in order to implement Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁶

Notwithstanding these reforms, NYSE Rule 452's underlying routine/non-routine framework remains in place for matters outside the scope of the 2009 and 2010 amendments. Uninstructed shares, which commonly include a significant retail component, can be voted at the discretion of brokers on routine matters, treated as broker non-votes on non-routine matters, or not represented at the meeting at all in certain circumstances.⁷ The treatment of a given uninstructed share depends on which matters happen to appear on the ballot and how each is classified. This structure can affect quorum determinations, the ability to achieve approval thresholds, and a lower relative influence of beneficial owners who hold shares in a manner that are subject to NYSE Rule 452.

The Exchange proposes to replace this framework for TXSE-listed securities with a uniform process for the proportional allocation of uninstructed shares. Under the proposed rule, a Member would submit uninstructed shares and allocate votes on each proposal in proportion to the voting instructions received from beneficial owners for whom the Member holds shares in the applicable TXSE-listed security. The allocation operates the same way for every matter submitted to a vote, regardless of who proposes the matter.

⁵ See 2009 NYSE Approval Order, 74 FR at 33300.

⁶ See Exchange Act Release No. 62874 (Sept. 9, 2010), 75 FR 56152 (Sept. 15, 2010) (SR-NYSE-2010-59).

⁷ For example, where a broker submits a proxy for a routine matter but lacks authority to vote uninstructed shares on a non-routine matter at the same meeting, those uninstructed shares may be counted for quorum but not voted on the non-routine matter. Where no routine matter is presented, uninstructed shares may not be represented at the meeting, creating uncertainty as to whether an issuer will attain a quorum.

This approach has two structural consequences that distinguish it from the existing framework. First, the proposed rule eliminates broker discretionary voting entirely. The Member does not vote uninstructed shares according to its own judgment, the recommendations of management, or any other external input (other than how participating beneficial owners have instructed the Covered Member); the Covered Member applies a prescribed formula based exclusively on instructions submitted by participating beneficial owners. In 2009, the Commission expressed its view that voting outcomes should be determined by parties with an economic interest in the issuer, not by brokers who have no such interest. The proposed rule applies that principle to every matter submitted to a shareholder vote at TXSE-listed companies. Second, the proposed rule eliminates the inconsistent and proposal-dependent treatment of uninstructed shares produced by NYSE Rule 452's routine/non-routine framework. Every matter on every ballot is treated the same way, ensuring that the treatment of uninstructed shares depends on the preferences of participating beneficial owners rather than the incidental composition of the meeting agenda.

As further described below, the proposed rule would not alter any beneficial owner's right to vote, abstain, withhold where applicable, or otherwise provide voting instructions. It is neutral as to voting choice: it does not favor management, opposition, or any shareholder proponent; it applies the same formula based solely on the voting instructions submitted by participating beneficial owners.

Existing TXSE Rule 13.003

TXSE Rule 13.003(b) currently prohibits a Member from giving a proxy to vote stock registered in its name, unless: (i) the Member is the beneficial owner of such stock; (ii) the proxy is given pursuant to the written instructions of the beneficial owner; or (iii) the proxy is given

pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. As such, the treatment of uninstructed shares under the current framework generally turns on the discretionary voting rules applicable to the Member, including NYSE Rule 452.⁸

Existing Rule 13.003(c) separately prohibits a Member that is not the beneficial owner of a security from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors (other than for a vote with respect to 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 unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner. The proposed rule retains the restriction on discretionary voting in existing Rule 13.003(c), while requiring the ministerial proportional allocation outlined in the proposed rule.

Description of the Proposed Rule

Proposed Rule 13.003(c) would apply to a Member that holds shares of an equity security, with a primary listing on the Exchange, on behalf of a beneficial owner and has not received voting instructions from that beneficial owner as of the applicable instruction cutoff, referred to in the proposed rule as the “Calculation Date,” subject to the exclusions set forth in the proposed rule. A Member subject to proposed Rule 13.003(c) is referred to in the proposed rule as a “Covered Member.” The proposed rule would require the Covered Member to vote

⁸ FINRA Rule 2251 similarly limits the circumstances under which FINRA members may vote proxies without instructions from beneficial owners and permits a member to give a proxy pursuant to the rules of a national securities exchange of which it is a member. Nasdaq General 9, Section 6 provides that Nasdaq members shall comply with FINRA Rule 2251 as if it were part of Nasdaq’s rules. See FINRA Rule 2251(b)(3); Nasdaq General 9, Section 6(a).

uninstructed shares at the shareholder meeting and to allocate votes on each proposal in the same proportion as the instructions received from participating beneficial owners for whom the Member holds shares in the applicable security.

Proposed Rule 13.003(c)(1) provides that the Covered Member shall submit a proxy designating the Uninstructed Shares as present at such meeting, regardless of whether any matter on the ballot for such meeting would otherwise qualify as a routine matter permitting discretionary voting under the rules of any other national securities exchange or association of which such Covered Member is a member. Submission of a proxy for purposes of representation at the meeting shall not be deemed the exercise of discretionary voting authority.

Proposed Rule 13.003(c)(2) provides that a Covered Member shall vote uninstructed shares on each proposal by casting votes FOR, AGAINST, and ABSTAINING, or such other voting categories as are available for the applicable proposal, in the same proportion as the aggregate voting instructions received by the Covered Member from beneficial owners of shares of such issuer held by the Covered Member who have submitted voting instructions with respect to such proposal. Proposed Rule 13.003(c)(2)(A) provides that if the Covered Member has received no voting instructions from any beneficial owner with respect to a particular proposal, the Covered Member shall vote all Uninstructed Shares as ABSTAINING, or in the applicable non-directional category available for such proposal, such as WITHHOLD.

Proposed Rule 13.003(c)(2)(B) provides that the proposed proportional allocation requirement would not apply to shares held or voted by a Covered Member in any capacity described in Rule 13.003(e), including shares voted by a Covered Member acting as an executor, administrator, guardian, trustee, or in a similar fiduciary capacity. The proposed requirement also would not apply to shares voted by a named ERISA Plan investment manager or by a designated

investment adviser pursuant to Rule 13.003(e). Such shares also would be excluded from the calculation of the instructed vote distribution.

Existing Rule 13.003(c) would be re-lettered as Rule 13.003(d). The Exchange proposes to retain the existing prohibition on a Member that is not the beneficial owner of a Section 12 security granting a proxy to vote the security in connection with director elections, executive compensation, or any other significant matter determined by the Commission unless the beneficial owner has instructed the Member to vote the proxy in accordance with the beneficial owner's instructions. This prohibition would continue to apply to securities and accounts outside the scope of proposed Rule 13.003(c), including securities not listed on the Exchange and shares otherwise excluded from the proposed proportional allocation requirement. Proposed Rule 13.003(d) would also clarify that the mandatory proportional allocation required under proposed Rule 13.003(c) does not constitute the giving of a proxy to vote at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule or Exchange Act Section 6(b)(10) because the Covered Member exercises no judgment, preference, or discretion in determining the votes cast for the Uninstructed Shares.

Proposed Rule 13.003(c)(3) provides that the proportional allocation required under paragraph (c)(2) of this TXSE Rule constitutes a mandatory ministerial obligation of the Covered Member. In executing such allocation, the Covered Member exercises no judgment, preference, or discretion as to how Uninstructed Shares are voted; the allocation is determined solely by application of the formula prescribed by such paragraph (c)(2) and Interpretation and Policy .02 to this TXSE Rule without modification or substitution by the Covered Member. The proportional allocation obligation under this paragraph (c) does not constitute the giving of a proxy to vote at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule

or Exchange Act Section 6(b)(10).

Proposed Rule 13.003(c)(4) would require a Covered Member to maintain records of the proportional allocation methodology applied pursuant to proposed Rule 13.003(c)(2) in accordance with Exchange Act Rule 17a-4.

Proposed Interpretation and Policy .02 (a) would add the following definitions: (1) "Calculation Date" means the date and time by which the Covered Member customarily closes receipt of voting instructions from beneficial owners in connection with a shareholder meeting of the applicable issuer, in accordance with the Covered Member's standard proxy processing practices as applied to meetings of other issuers whose securities the Covered Member holds in the same capacity. The Calculation Date shall be no later than the date the Covered Member submits its final vote tally to the meeting tabulator. If a shareholder meeting is adjourned and reconvened, a new Calculation Date shall apply based on the reconvened meeting date in accordance with the same standard practices; (2) "Category Percentage" means, for each available voting category on a proposal, the quotient obtained by dividing the number of Total Instructed Shares allocated to such category by the Total Instructed Shares; (3) "Covered Member" has the meaning set forth in Rule 13.003(c) of this TXSE Rule; (4) "Instructed Vote Distribution" has the meaning set forth in Rule 13.003(c)(2) of this TXSE Rule; (5) "Total Instructed Shares" means, for a given proposal, the aggregate number of shares of the applicable issuer held in the Covered Member's custody for which voting instructions have been received and allocated to a voting category as of the Calculation Date, excluding shares described in Rule 13.003(c)(2)(B); and (6) "Uninstructed Shares" has the meaning set forth in Rule 13.003(c) of this TXSE Rule.

Proposed Interpretation and Policy .02 (b) would establish the methodology for

calculating the proportional allocation of uninstructed shares. The calculation would be performed separately for each proposal on the ballot. A beneficial owner that provides voting instructions on one proposal but not another would be included in the instructed vote distribution only for the proposal on which instructions were received, and the shares would be treated as Uninstructed Shares for each proposal where voting instructions were not submitted. Any fractional allocation resulting from the allocation formula would be rounded down to the nearest whole share, and any remainder shares would be allocated to ABSTAINING.

Proposed Interpretation and Policy .02 (c) provides that the Instructed Vote Distribution and Total Instructed Shares shall be calculated separately for each proposal on the ballot. A beneficial owner who has submitted voting instructions with respect to one or more proposals but not all proposals shall be included in the Total Instructed Shares for each proposal on which instructions were received, and the shares held for such beneficial owner shall be treated as Uninstructed Shares for each proposal on which no instructions were received.

Proposed Interpretation and Policy .02 (d) provides that Where the voting options for a proposal include WITHHOLD AUTHORITY in lieu of, or in addition to, AGAINST, including in connection with director elections conducted under a plurality voting standard, the proportional allocation described in paragraph (b) of this Interpretation and Policy shall be applied to each available voting category in the same manner, substituting WITHHOLD AUTHORITY for AGAINST, where applicable. Any remainder shares shall be allocated to ABSTAINING, or to WITHHOLD AUTHORITY if ABSTAINING is not an available voting category for such proposal.

The Exchange is also proposing to make certain corresponding numbering changes to Rule 13.003 in order to accommodate the proposed changes.

Examples

The following examples illustrate the operation of proposed Rule 13.003(c) and proposed Interpretation and Policy .02.

Example 1: A Covered Member holds 100 shares of an Exchange-listed security on behalf of beneficial owners. As of the Calculation Date, the Covered Member has received voting instructions for 60 shares and has received no voting instructions for the remaining 40 shares. The allocation would be calculated as follows:

Voting Category	Instructed Shares	Instructed Vote Distribution	Allocated Uninstructed Shares
FOR	36	60%	24
AGAINST	18	30%	12
ABSTAINING	6	10%	4
Total	60	100%	40

Example 2: A Covered Member holds 100 shares of an Exchange-listed security on behalf of beneficial owners. As of the Calculation Date, the Covered Member has received voting instructions for 3 shares and has received no voting instructions for the remaining 97 shares. The allocation would be calculated as follows:

Voting Category	Instructed Shares	Instructed Vote Distribution	Initial Allocation of	Round Allocation
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		Uninstructed Shares			
	FOR	1	33.33%	32.33	32
	AGAINST	1	33.33%	32.33	32
G	ABSTAININ	1	33.33%	32.33	33
	Total	3	100%	97	97

Background and History of Broker Discretionary Voting

The proposed rule should be understood against the historical development of broker discretionary voting and the modern street-name holding system. The Commission has described NYSE's broker-discretionary voting rule as dating back to 1937, reflecting a long-standing accommodation to the intermediated ownership structure. In the street-name holding system, the broker, bank, or nominee generally appears as the shareholder of record, while the underlying investor with economic ownership is the beneficial owner.⁹

Broker discretionary voting predates the modern street-name ownership system, but its practical significance increased as share ownership became increasingly intermediated. In the 2009 NYSE Approval Order, the Commission cited data indicating that in 1976, approximately 71 percent of securities were held directly by record holders and approximately 29 percent through securities intermediaries. By contrast, the Commission cited data showing that, by the end of 2002, DTC had on deposit approximately 84 percent of shares issued by domestic NYSE-listed companies and approximately 88 percent of shares issued by domestic Nasdaq-listed

⁹ See 2009 NYSE Approval Order, 74 FR at 33293-33294.

companies.¹⁰ As the proportion of street-name holdings increased, the treatment of uninstructed shares by intermediaries became more significant to shareholder meeting mechanics. At the same time, the scope of matters treated as eligible for broker discretionary voting continued to narrow.

The modern narrowing of broker discretionary voting began when NYSE established its Proxy Working Group in 2005 to review the NYSE rules regulating the proxy voting process, with a focus on NYSE Rule 452. The Proxy Working Group recommended that director elections should no longer be treated as routine and that brokers should no longer be permitted to vote shares for beneficial owners who did not provide specific voting instructions. In making that recommendation, the Proxy Working Group also recognized that the proposed change could significantly affect the director election process, including by increasing the costs of uncontested elections and potentially increasing the influence of proxy advisory firms, special-interest groups or others with a particular agenda to challenge an incumbent board at the expense of smaller shareholders.¹¹

NYSE filed SR-NYSE-2006-92 in October 2006. After several amendments, the Commission approved the proposed rule change in the 2009 NYSE Approval Order, eliminating broker discretionary voting for director elections at shareholder meetings held on or after January 1, 2010, subject to the investment company exception. The Commission received 153 comment letters from 137 commenters on the proposal.¹²

The Commission's approval order emphasized the importance of shareholder

¹⁰ See 2009 NYSE Approval Order, 74 FR at 33294 n.11 (citing Securities Exchange Act Release No. 50758 (November 30, 2004), 69 FR 70852 (December 7, 2004)) (noting that at the end of 2002, DTC had on deposit approximately 84% of shares issued by domestic NYSE-listed companies and approximately 88% of shares issued by domestic Nasdaq-listed companies).

¹¹ See Securities Exchange Act Release No. 59464 (February 26, 2009), 74 FR 9864 (March 6, 2009) (SR-NYSE-2006-92) (summarizing the Proxy Working Group report).

¹² See 2009 NYSE Approval Order, 74 FR at 33293 (noting the Commission received 153 comment letters from 137 commenters).

enfranchisement and the relationship between voting authority and economic interest. In approving the NYSE proposal, the Commission stated that having shareholders with an economic interest in the company vote the shares furthers the goal of enfranchising shareholders as opposed to brokers without such economic interest.¹³ At the same time, the comment record reflected concerns regarding quorum, solicitation costs, retail participation, proxy-advisor influence, and related aspects of the broader proxy voting process.¹⁴ Two Commissioners dissented, based in part on their concerns that eliminating broker discretionary voting could affect retail shareholder participation, quorum, solicitation costs, and the relative influence of third parties.¹⁵

2009 NYSE Rule 452 Comment Record on Proportional Voting

The comment file for the 2009 NYSE Rule 452 amendments also demonstrates that proportional voting was a known and seriously discussed alternative to both broker discretionary voting and the complete exclusion of uninstructed shares. For example, the NYSE Proxy Working Group stated in its 2009 comment letter that it had discussed and considered proportional voting and that, following publication of its 2006 report, the Securities Industry and Financial Markets Association (“SIFMA”) issued a best-practices memo suggesting uninstructed retail shares be voted in proportion to shares voted by other retail shareholders rather than at the broker's discretion.¹⁶ The PWG Comment Letter further acknowledged that Broadridge data

¹³ See 2009 NYSE Approval Order, 74 FR at 33296 (noting that voting should be connected to those with economic interest).

¹⁴ See 2009 NYSE Approval Order, 74 FR at 33296-33298 (summarizing comment record concerns regarding quorum, solicitation costs, retail participation, and the influence of third parties).

¹⁵ See Statement of Commissioner Troy A. Paredes at Open Meeting, Statement at SEC Open Meeting (July 1, 2009) (“Paredes Statement”), available at <https://www.sec.gov/news/speech/2009/spch070109tap.htm>; Statement of Commissioner Kathleen L. Casey at Open Meeting, Statement at SEC Open Meeting (July 1, 2009) (“Casey Statement”), available at <https://www.sec.gov/news/speech/2009/spch070109klc.htm>.

¹⁶ Letter from Larry W. Sonsini, Chairman, Proxy Working Group of the New York Stock Exchange, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 25, 2009, SR-NYSE-

suggested proportional voting had a significant impact on companies' ability to attain a quorum, even if it had a limited impact on the outcome of director elections.

Other commenters also addressed proportional voting, with several commenters supporting proportional voting as an alternative to the NYSE proposal, arguing that it could better reflect retail shareholder sentiment and reduce concerns about quorum and solicitation.¹⁷

Other commenters opposed proportional voting, raising concerns about vote integrity, disproportionate influence, and inconsistency with the principle commonly described as “one share, one vote.”¹⁸

In its approval of the 2009 NYSE Approval Order, the Commission also acknowledged concerns that proportional voting could have a distortive impact depending on how it was implemented, including whether the calculation reflected retail-only votes or a broader pool of account holders. At the same time, the Commission did not conclude that proportional voting was categorically inconsistent with the Act. Rather, the Commission stated that the existence of other reasonable alternatives did not render the NYSE proposal inconsistent with Section 6(b)(5).¹⁹

2006-92 ("PWG Comment Letter"), available at <https://www.sec.gov/comments/sr-nyse-2006-92/nyse200692-66.pdf>.

¹⁷ See, e.g., 2009 NYSE Approval Order, 74 FR at 33305 nn.115-116 (noting commenters that endorsed proportional voting in general or supported it as an alternative to the NYSE proposal, including the comment letter from R. Scott McMillen of the Charels Schwab Corporation (the “Schwab Letter”) available: <https://www.sec.gov/comments/sr-nyse-2006-92/nyse200692-120.pdf> (stating proportional voting is “a better first step” than eliminating discretionary broker voting), the PWG Comment Letter (expressing no objection to SIFMA members implementing proportional voting), and the Broadridge Letter); see also id. at 33305 n.119 (noting commenters that stated proportional voting could provide a more accurate reflection of retail shareholder sentiment than eliminating broker discretionary voting).

¹⁸ See, e.g., 2009 NYSE Approval Order, 74 FR at 33305-33306 nn.123-127 (noting commenters opposing proportional voting on grounds including vote integrity, disproportionate influence, and inconsistency with the principle commonly described as “one share, one vote”).

¹⁹ See 2009 NYSE Approval Order, 74 FR at 33302 (stating that “proportional voting could have a distortive impact, depending on how it is implemented” and that “the fact that there may be other reasonable alternatives does not mean that the rule change proposed by the NYSE is inconsistent with Section 6(b)(5) of the Act”); see also id. at 33302 n.129 (noting the Commission's specific implementation concern that

The Exchange's proposal to amend Rule 13.003 addresses the implementation concerns reflected in the 2009 NYSE Approval Order. Unlike voluntary or broker-specific proportional voting practices discussed in 2009, proposed Rule 13.003(c) would prescribe a uniform methodology, apply on a proposal-by-proposal basis, exclude shares held or voted pursuant to fiduciary, advisory, ERISA, or other discretionary authority, and require records of the proportional allocation methodology.

Dodd-Frank Section 957 and Exchange Act Section 6(b)(10)

Following the 2009 amendments, the scope of broker discretionary voting continued to narrow. Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act directed national securities exchanges to adopt rules prohibiting members from voting uninstructed shares in connection with director elections, executive compensation, and other significant matters as determined by the Commission.²⁰ Existing Rule 13.003(c) of the Exchange's rules reflects this prohibition and is retained in the proposed rule change, re-lettered as Rule 13.003(d).

The Senate Report accompanying Section 957 framed the relevant policy as preventing broker preferences from affecting the outcome of votes. The report states that final vote tallies should reflect the wishes of the beneficial owners of the stock, not those of the broker holding the shares.²¹

The Commission repeated that principle in approving the rule changes that NYSE and Nasdaq proposed to address Section 957 of the Dodd-Frank Act. In those orders, the

proportional voting calculations varied depending on whether they reflected retail-only votes or a broader pool of account holders).

²⁰ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 957, 124 Stat. 1376, 1906 (2010), codified at Exchange Act Section 6(b)(10), 15 U.S.C. § 78f(b)(10).

²¹ S. Rep. No. 111-176, at 136 (2010) ("Senate Report").

Commission quoted the Senate Report and concluded that NYSE's and Nasdaq's proposals furthered investor protection and the public interest by assuring that votes on matters covered by Section 6(b)(10) are made by those with an economic interest in the company, rather than by a broker without such economic interest.²²

The Exchange recognizes that Section 6(b)(10) of the Exchange Act requires the rules of a national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection with a shareholder vote on specified matters, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The proposed rule is designed to address that statutory concern by eliminating Member discretion. A Covered Member would not select a voting outcome, apply a house voting policy, follow management, or follow a third-party recommendation. Instead, the Covered Member would be required to apply a mandatory formula derived solely from voting instructions submitted by participating beneficial owners.

Existing Rule 13.003(b)(iii) permits a Member to give a proxy pursuant to the rules of another national securities exchange or association of which the Member is a member. Proposed Rule 13.003(c) would create a TXSE-specific requirement for covered Exchange-listed securities and therefore applies notwithstanding Rule 13.003(b)(iii). The Exchange is not proposing to eliminate Rule 13.003(b)(iii), as that provision would continue to apply outside the scope of

²² See Securities Exchange Act Release No. 62874 (September 9, 2010), 75 FR 56154-57 (SR-NYSE-2010-59) ("NYSE Dodd-Frank Order") (approving NYSE's conforming amendment to Rule 452 to implement Section 6(b)(10)); Securities Exchange Act Release No. 62992 (September 24, 2010), 75 FR 60844-46 (October 1, 2010) (SR-Nasdaq-2010-114) ("Nasdaq Dodd-Frank Order") (approving Nasdaq Rule 2251 conforming amendment, stating that "the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer . . . and 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").

proposed Rule 13.003(c). Existing Rule 13.003(c), re-lettered as Rule 13.003(d), would retain the Exchange's prohibition on discretionary voting for matters covered by Exchange Act Section 6(b)(10). The proposed amendment to re-lettered Rule 13.003(d) clarifies that the mandatory proportional allocation required by proposed Rule 13.003(c) is not an exercise of Member discretion.

This history informs the proposed rule. The proposed rule would replace Member discretion with a mandatory, formula-driven allocation based on voting instructions submitted by participating beneficial owners. In doing so, the proposed rule is designed to reaffirm the policy that vote treatment should be derived from beneficial-owner preferences and not from Member judgment or preference.

Policy Considerations

The Exchange believes the proposed rule advances the policy objectives underlying the Act and is consistent with both the principles articulated by the Commission in the 2009 NYSE Approval Order and by Congress in Section 957 of the Dodd-Frank Act. Depending on the proposals on the ballot and their classification under NYSE Rule 452, the absence of voting instructions from a beneficial owner may affect the determination of a quorum, increase the effective approval threshold for a proposal, reduce the relative influence of beneficial owners who submit voting instructions, or result in shares not being represented at the meeting at all. The treatment of an uninstructed share is therefore not neutral, it is determined by the incidental composition of the meeting agenda and by classification decisions made by another self-regulatory organization on a case-by-case basis. Compounding this concern, the routine/non-routine classification does not consistently track the practical or economic significance of the proposal to beneficial owners and matters with meaningful economic consequences, including

reverse stock splits and increases in authorized common stock for general corporate purposes, some of which may be treated as routine and therefore subject to broker discretionary voting.

The proposed rule addresses these concerns by replacing proposal-dependent treatment with a uniform methodology that applies the same formula to every matter submitted to a shareholder vote and that is derived solely from the voting instructions submitted by participating beneficial owners. In doing so, the proposed rule eliminates Member discretion in the voting of uninstructed shares. Rather than voting in accordance with its own judgment, the recommendations of the issuer's management, the recommendations of any third party, or any house voting policy, a Covered Member would apply a prescribed formula derived solely from voting instructions submitted by participating beneficial owners. In this respect, the proposed rule advances the principle that the outcome of shareholder votes should be determined by the beneficial owners rather than by intermediaries. The proposed rule applies that principle uniformly to every matter submitted to a shareholder vote on TXSE-listed securities, including matters that remain eligible for broker discretionary voting under the current framework, and reflects an approach that is not novel: proportional voting was identified as a known alternative in the 2009 NYSE Rule 452 comment record, and certain broker-dealers have voluntarily applied proportional methodologies when exercising discretionary authority on routine matters.²³

The proposed rule is neutral as to voting choice. It does not favor management, opposition, or any shareholder proponent, and does not guarantee support for, or opposition to, any board recommendation. The Exchange acknowledges that the proposed rule will have some effect on voting outcomes, as any rule governing the treatment of uninstructed shares necessarily does. The proposed rule is, however, structurally neutral as among the parties seeking to

²³ See Schwab Letter.

influence those outcomes. Nor does the proposed rule impair the rights of any shareholder or shareholder proponent: it does not limit the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions, and it does not eliminate or restrict shareholder proposals or the rights of any party to present matters to a vote. The proposed rule preserves the distinction between affirmative silence (an instruction to abstain or, in the case of director elections, to withhold) and non-response, treating the former as an instruction reflected in the allocation calculation in the same manner as a vote FOR or AGAINST, and thereby prevents the dilution of the influence of beneficial owners who have engaged with the proxy materials.

The proposed rule is also consistent with the policy reflected in Section 957 of the Dodd-Frank Act, which directed national securities exchanges to adopt rules prohibiting members from voting uninstructed shares in connection with director elections, executive compensation, and other significant matters as determined by the Commission. The Senate Report accompanying Section 957 framed the relevant policy as ensuring that final vote tallies reflect the wishes of the beneficial owners of the stock rather than those of the broker holding the shares. The proposed rule reaffirms that policy and extends its underlying principle to the matters that remain eligible for broker discretionary voting under the current framework, including ratification of auditors, certain stock splits and reverse stock splits, increases in authorized common stock, adjournments, and a limited number of other matters. The Exchange notes that Section 957 does not prescribe how uninstructed shares should or should not be treated outside those covered matters, and notwithstanding the scope of its specific prohibitions, the proposed rule operates within the latitude left by the statute. By eliminating the variation in voluntary proportional voting practices that has developed under the current framework and reducing reliance on proposal-by-proposal classification determinations by another self-regulatory organization, the proposed rule provides

a uniform, transparent, and consistently applied approach to the treatment of uninstructed shares in TXSE-listed securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(10) of the Act,²⁶ which addresses the voting of proxies on behalf of beneficial owners by members of national securities exchanges.

The Exchange believes the proposed rule is consistent with Section 6(b)(5) because it replaces a proposal-dependent framework for the treatment of uninstructed shares with a uniform methodology that applies the same formula to every matter submitted to a shareholder vote. Under the current framework, the absence of voting instructions from a beneficial owner may, depending on the proposals on the ballot and their classification under NYSE Rule 452, affect the determination of a quorum, increase the effective approval threshold for a proposal, reduce the relative influence of beneficial owners who submit voting instructions, or result in shares not being represented at the meeting at all. The proposed rule removes these proposal-dependent

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(10).

effects by prescribing a single methodology that applies to every matter submitted to a vote and that is derived solely from the voting instructions submitted by participating beneficial owners. The Exchange believes that this uniform treatment promotes just and equitable principles of trade and removes impediments to a free and open market by ensuring that the treatment of uninstructed shares is determined by a transparent and consistently applied formula rather than by the composition of the meeting agenda and the classification decisions of another self-regulatory organization.

The Exchange further believes the proposed rule is consistent with Section 6(b)(5) because it protects investors and the public interest by eliminating a Covered Member discretion in the voting of uninstructed shares and by ensuring that the voting instructions of participating beneficial owners are the only inputs to the allocation of a Covered Member. A Covered Member would not vote in accordance with its own judgment, the recommendations of the issuer's management, the recommendations of any third party, or any house voting policy. The Covered Member would apply a prescribed formula derived solely from voting instructions submitted by participating beneficial owners. In this respect, the proposed rule advances the principle, articulated by the Commission in the 2009 NYSE Approval Order, that the outcome of shareholder votes should be determined by those with an economic interest in the issuer rather than by intermediaries without such an interest, and applies that principle uniformly to every matter submitted to a vote, including matters that remain eligible for broker discretionary voting under the current framework. The proposed rule is also neutral as to voting direction. It does not favor management, opposition, or any shareholder proponent, and does not guarantee support for, or opposition to, any board recommendation, rather, the allocation moves in the direction of the instructions submitted by participating beneficial owners. The proposed rule does not impair the

rights of any shareholder or shareholder proponent, as it does not limit the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions, nor does it eliminate or restrict shareholder proposals or the rights of any party to present matters to a vote. The proposed rule preserves the distinction between affirmative silence (an instruction to abstain or, in the case of director elections, to withhold) and non-response, treating the former as an instruction reflected in the allocation calculation in the same manner as a vote FOR or AGAINST, and thereby prevents the dilution of the influence of beneficial owners who have engaged with the proxy materials.

The Exchange believes the proposed rule is consistent with Section 6(b)(10) because it does not authorize Members that are not beneficial owners to exercise discretionary voting authority on the matters covered by that provision in the absence of beneficial-owner instructions. The Exchange is retaining the existing prohibition required by Section 6(b)(10) in re-lettered Rule 13.003(d), which carries forward the substance of existing Rule 13.003(c) without modification of its scope. The mandatory proportional allocation required by proposed Rule 13.003(c) is consistent with Section 6(b)(10) because it does not involve the exercise of Member discretion. A Covered Member would not select a voting outcome, apply a house voting policy, follow management, or follow a third-party recommendation, but would instead apply a mandatory formula derived exclusively from voting instructions submitted by participating beneficial owners.²⁷ The proposed rule expressly clarifies in re-lettered Rule 13.003(d) that the mandatory proportional allocation required under proposed Rule 13.003(c) does not constitute the granting of a proxy to vote at the Member's discretion because the Covered Member

²⁷ The Exchange notes that the Commission has previously approved proportional voting for auction rate preferred securities. See Securities Exchange Act Release No. 37015 (March 22, 1996), 61 FR 14183 (March 29, 1996) (SR-NYSE-96-02).

exercises no judgment, preference, or discretion in determining the votes cast for the uninstructed shares.

The Exchange further believes the proposed rule is consistent with the policy reflected in Section 957 of the Dodd-Frank Act, which directed national securities exchanges to adopt rules prohibiting members from voting uninstructed shares in connection with director elections, executive compensation, and other significant matters as determined by the Commission. The Senate Report accompanying Section 957 framed the relevant policy as ensuring that final vote tallies reflect the wishes of the beneficial owners of the stock rather than those of the broker holding the shares, and the Commission reiterated this principle in approving the NYSE and Nasdaq conforming rule amendments. The proposed rule reaffirms that policy and extends its underlying principle to the matters that remain eligible for broker discretionary voting under the current framework, including ratification of auditors, certain stock splits and reverse stock splits, increases in authorized common stock, adjournments, and a limited number of other matters. The Exchange notes that Section 957 does not prescribe how uninstructed shares should or should not be treated outside the scope of its specific prohibitions, and the proposed rule operates within the latitude left by the statute.

The Exchange acknowledges that the Commission considered proportional voting in the 2009 NYSE Rule 452 proceeding and did not adopt it at that time. The Commission did not, however, conclude that proportional voting was categorically inconsistent with the Act; rather, the Commission stated that the existence of other reasonable alternatives did not render the NYSE proposal inconsistent with Section 6(b)(5). The Exchange believes the proposed rule addresses the implementation concerns reflected in the comment record of that proceeding. Unlike the voluntary or broker-specific proportional voting practices discussed in 2009, proposed

Rule 13.003(c) prescribes a uniform methodology, applies on a proposal-by-proposal basis, excludes shares held or voted pursuant to fiduciary, advisory, ERISA, or other discretionary authority, requires Covered Members to maintain records of the proportional allocation methodology applied, and operates within the prohibitions of Section 6(b)(10) by eliminating Member discretion entirely.

Finally, the Exchange believes that the proposed corresponding numbering changes are consistent with the Act because they make the Exchange's Rules more clear and understandable.

For these reasons, the Exchange believes that the proposed changes are consistent with the Act.

(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.

The proposed rule applies uniformly to all Members that hold shares of TXSE-listed equity securities on behalf of beneficial owners. All Covered Members are subject to the same proportional allocation methodology and the same recordkeeping requirements. The proposed rule does not advantage any Member or class of Members relative to any other, and it does not impose differential obligations based on Member size, business model, or customer composition. Accordingly, the Exchange does not believe the proposed rule imposes any burden on intramarket competition.

The proposed rule also does not impose any burden on intermarket competition. The proposed rule governs the conduct of TXSE Members in connection with the voting of uninstructed shares of TXSE-listed equity securities. Other exchanges may at any time choose to adopt this proposal, retain existing rules, or otherwise modify its own rules in this area. To the

extent the proposed rule reflects a different approach to the treatment of uninstructed shares than the approach adopted by other national securities exchanges, the Exchange believes that such differentiation is consistent with the purposes of the Act and reflects appropriate competition among self-regulatory organizations in establishing the rules applicable to securities listed on their respective markets.

The Exchange does not believe the proposed rule imposes any burden on competition among issuers. The proposed rule applies uniformly to all TXSE-listed equity securities subject to its scope and does not distinguish among issuers based on size, industry, capital structure, or any other characteristic. The proposed rule does not alter the substantive rights of issuers, shareholders, or shareholder proponents, and does not affect the ability of any issuer to submit any matter to a shareholder vote or the ability of any shareholder to vote, abstain, withhold, or otherwise provide voting instructions on any such matter.

For the foregoing reasons, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to

be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change; or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-TXSE-2026-008 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 No. SR-TXSE-2026-008. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information

that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-TXSE-2026-008 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

Rules of Texas Stock Exchange LLC

* * * * *

CHAPTER 13. MISCELLANEOUS PROVISIONS

* * * * *

Rule 13.003. Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting

(a) A Member when so requested by an issuer and upon being furnished with: (1) sufficient copies of proxy materials, annual reports, information statements or other material required by law to be sent to security holders periodically and (2) satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner of securities (or the beneficial owner's designated investment adviser as defined in Interpretation and Policy .01 to this TXSE Rule) of such issuer which are in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished. In the event of a proxy solicitation, such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A Member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. This paragraph shall not apply to beneficial owners residing outside of the United States of America though Members may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

(b) No Member shall give a proxy to vote stock that is registered in its name, unless: (i) such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following.

(c) Notwithstanding paragraph (b)(iii) of this TXSE Rule, a Member that carries an account for the beneficial owner of an equity security of an issuer with a

primary listing on TXSE and holds such security in a name other than the name of the beneficial owner, other than accounts for which the Member or an affiliated person exercises voting authority in a fiduciary, advisory, or discretionary capacity pursuant to an agreement with the beneficial owner (a "Covered Member") shall, with respect to any shares of such security held for a beneficial owner from whom no voting instructions have been received as of the Calculation Date (as defined in Interpretation and Policy .02 to this TXSE Rule) (the "Uninstructed Shares"), comply with the following obligations in connection with each shareholder meeting of such issuer:

(1) Submission of Proxy. The Covered Member shall submit a proxy designating the Uninstructed Shares as present at such meeting, regardless of whether any matter on the ballot for such meeting would otherwise qualify as a routine matter permitting discretionary voting under the rules of any other national securities exchange or association of which such Covered Member is a member. Submission of a proxy for purposes of representation at the meeting shall not be deemed the exercise of discretionary voting authority.

(2) Proportional Allocation of Votes. The Covered Member shall vote the Uninstructed Shares on each proposal submitted to shareholders at such meeting by casting votes FOR, AGAINST, and ABSTAINING, or such other voting categories as are available for the applicable proposal, in the same proportion as the aggregate voting instructions received by such Covered Member from beneficial owners of shares of such issuer held in such Covered Member's custody who have submitted voting instructions with respect to such proposal as of the Calculation Date (the "Instructed Vote Distribution"), calculated in accordance with Interpretation and Policy .02 to this TXSE Rule; provided that:

(A) If the Covered Member has received no voting instructions from any beneficial owner with respect to a particular proposal as of the Calculation Date, the Covered Member shall vote all Uninstructed Shares as ABSTAINING on such proposal; and

(B) This paragraph (c) shall not apply to shares held or voted by a Covered Member in any capacity described in paragraph (e) of this TXSE Rule, including shares voted by a Covered Member acting as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity, shares voted by a named ERISA Plan investment manager pursuant to paragraph (e)(1) of this TXSE Rule, and shares voted by a designated investment adviser pursuant to paragraph (e)(2) of this TXSE Rule. Such shares shall also be excluded from the calculation of the Instructed Vote Distribution.

(3) Nature of Proportional Allocation Obligation. The proportional allocation required under paragraph (c)(2) of this TXSE Rule constitutes a mandatory ministerial obligation of the Covered Member. In executing such allocation, the Covered Member exercises no judgment, preference, or discretion as to how Uninstructed Shares are voted; the allocation is determined solely by application of the formula prescribed by such paragraph (c)(2) and Interpretation and Policy .02 to this TXSE Rule without modification or substitution by the Covered Member. The proportional allocation obligation under this paragraph (c) does not constitute the giving of a proxy to vote at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule or Exchange Act Section 6(b)(10).

(4) Recordkeeping. A Covered Member shall maintain records of the proportional allocation methodology applied pursuant to paragraph (c)(2) in accordance with Exchange Act Rule 17a-4.

[(c)d] Notwithstanding the foregoing, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to 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, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner. For purposes of this paragraph (d) and Exchange Act Section 6(b)(10), the mandatory proportional allocation of Uninstructed Shares pursuant to Rule 13.003(c)(2) does not constitute the giving of a proxy to vote a security at the Member's discretion in violation of paragraphs (b) or (d) of this TXSE Rule or Exchange Act Section 6(b)(10); the Covered Member exercises no judgment, preference, or discretion in determining the votes cast for such shares, which are determined solely by the formula prescribed by Rule 13.003(c)(2) and Interpretation and Policy .02 to this TXSE Rule. Accordingly, the prohibition set forth in this paragraph (d) does not apply to the execution of the mandatory proportional allocation required under Rule 13.003(c)(2).

[(d)e] Notwithstanding the foregoing, a Member may give a proxy to vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee or in a similar representative or fiduciary capacity with authority to vote. A Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of this TXSE Rule shall obtain the requisite number of signed

proxies from such holder of record. Notwithstanding the foregoing: (1) any Member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

Interpretations and Policies

.01 For purposes of this TXSE Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940, or registered as an investment adviser under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy and to receive annual reports and other material sent to security holders.

(a) For purposes of this TXSE Rule, the term "state" shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act (as the same may be amended from time to time).

(b) The written designation must be signed by the beneficial owner; be addressed to the Member; and include the name of the designated investment adviser.

(c) Members that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act, or with a state as an investment adviser under the laws of such state, and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(d) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the Member.

.02 For purposes of Rule 13.003(c) of this TXSE Rule, the proportional allocation of votes for Uninstructed Shares shall be determined in accordance with the following methodology.

(a) Definitions. The following terms have the meanings set forth below for purposes of this Interpretation and Policy .02 and Rule 13.003(c):

(1) "Calculation Date" means the date and time by which the Covered Member customarily closes receipt of voting instructions from beneficial owners in connection with a shareholder meeting of the applicable issuer, in accordance with the Covered Member's standard proxy processing practices as applied to meetings of other issuers whose securities the Covered Member holds in the same capacity. The Calculation Date shall be no later than the date the Covered Member submits its final vote tally to the meeting tabulator. If a shareholder meeting is adjourned and reconvened, a new Calculation Date shall apply based on the reconvened meeting date in accordance with the same standard practices.

(2) "Category Percentage" means, for each available voting category on a proposal, the quotient obtained by dividing the number of Total Instructed Shares allocated to such category by the Total Instructed Shares.

(3) "Covered Member" has the meaning set forth in Rule 13.003(c) of this TXSE Rule.

(4) "Instructed Vote Distribution" has the meaning set forth in Rule 13.003(c)(2) of this TXSE Rule.

(5) "Total Instructed Shares" means, for a given proposal, the aggregate number of shares of the applicable issuer held in the Covered Member's custody for which voting instructions have been received and allocated to a voting category as of the Calculation Date, excluding shares described in Rule 13.003(c)(2)(B).

(6) "Uninstructed Shares" has the meaning set forth in Rule 13.003(c) of this TXSE Rule.

(b) Proportional Allocation Formula. For each proposal at a shareholder meeting, the Covered Member shall determine the number of Uninstructed Shares to be voted in each available voting category as follows:

(1) Determine the Total Instructed Shares for such proposal;

(2) For each available voting category, calculate the Category Percentage for such category;

(3) Multiply the total number of Uninstructed Shares by the Category Percentage for each voting category to produce an initial whole-and-fractional allocation for each category;

(4) Round down each initial allocation to the nearest whole share; and

(5) Allocate and vote any remainder shares, being the difference between the total number of Uninstructed Shares and the sum of the rounded allocations across all voting categories, to ABSTAINING.

(c) Proposal-Level Calculation. The Instructed Vote Distribution and Total Instructed Shares shall be calculated separately for each proposal on the ballot. A beneficial owner who has submitted voting instructions with respect to one or more proposals but not all proposals shall be included in the Total Instructed Shares for each proposal on which instructions were received, and the shares held for such beneficial owner shall be treated as Uninstructed Shares for each proposal on which no instructions were received.

(d) Voting Categories. Where the voting options for a proposal include WITHHOLD AUTHORITY in lieu of, or in addition to, AGAINST, including in connection with director elections conducted under a plurality voting standard, the proportional allocation described in paragraph (b) of this Interpretation and Policy shall be applied to each available voting category in the same manner, substituting WITHHOLD AUTHORITY for AGAINST, where applicable. Any remainder shares shall be allocated to ABSTAINING, or to WITHHOLD AUTHORITY if ABSTAINING is not an available voting category for such proposal.
