

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76580; File No. SR-NYSEMKT-2015-99)

December 8, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules to Prescribe the Securities Traders Examination as the Qualifying Examination for Persons Associated with A Member Organization Engaged Solely in Proprietary Trading, and Amend Continuing Education Requirement Applicable to Such Members

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 23, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange rules to prescribe the Securities Traders examination (Series 57) (the “Series 57 Examination”) as the qualifying examination for persons associated with a member organization (“Member”) engaged solely in proprietary trading, and amend Exchange rules regarding continuing education requirement applicable to such Member. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Rule 345 - Equities currently states that no Member shall permit any natural person to perform the duties customarily performed by a securities lending representative or a direct supervisor of such, unless such person is registered with, qualified by and is acceptable to the Exchange. The rule further states that Members shall comply with NASD Rule 1031 concerning the registration and approval of registered representatives and their supervisors. Under the current rule, each associated person of a Member who is included within the definition of “representative” in NASD Rule 1031 is required to appropriately register with the Exchange if such person is engaged in proprietary trading or directly supervises such activity. In order to engage in proprietary trading on the Exchange, an associated person must be registered as a General Securities Representative (Series 7) as NYSE MKT does not recognize the Series 56 Examination as an acceptable qualification standard for associated persons engaged in equities proprietary trading.<sup>4</sup>

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<sup>4</sup> While the Series 7 Examination is required for associated persons engaged in proprietary trading, Exchange rules do not require such individuals to work at a proprietary trading firm only. These individuals can work at any type of firm. However, they only may engage in proprietary trading at the firm where they are employed. For example, an individual engaged in proprietary trading at a full service firm, who is registered solely to engage in proprietary trading, may not act as a registered representative for that firm.

The Exchange proposes to amend Rule 345 – Equities to recognize a new category of limited representative registration for a Securities Trader and allow such individual to register in Web CRD<sup>5</sup> as a Securities Trader in order to engage in proprietary trading. As proposed, a Securities Trader would be any person engaged in the purchase or sale of securities or other similar instruments for the account of a member organization with which such person is associated, as an employee or otherwise, and who does not transact any business with the public.<sup>6</sup> Under the proposed rule, a Securities Trader must be registered as such on Web CRD and pass an appropriate qualification examination as prescribed by the Exchange. With this proposed rule change, Members engaged solely in proprietary trading, or who supervise such activity, would qualify for registration by passing the Series 57 Examination.

The Series 57 Examination is being developed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in consultation with industry and exchange representatives. The Series 57 Examination will be based on industry rules applicable to trading of equity securities and listed options contracts. The Series 57 examination will cover, among other things, recordkeeping and recording requirements; types and characteristics of securities and investments; trading practices; and display, execution, and trading systems.<sup>7</sup> The Exchange believes that acceptance of the Series 57 Examination will benefit both the Exchange and the applicable proprietary traders affected by the proposal because the examination would allow an

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<sup>5</sup> Web CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

<sup>6</sup> The proposed definition is similar to NYSE MKT LLC Rule 341, Commentary .01(c) [sic] and NYSE Arca, Inc. Rule 2.23(b)(2)(C).

<sup>7</sup> See Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (SR-FINRA-2015-017) (Order Approving a Proposed Rule Change to Establish the Securities Trader and Securities Trader Principal Registration Categories).

individual who wishes to transact business on NYSE MKT in a limited capacity to qualify by passing an examination tailored to that limited capacity.

Individuals currently engaged solely in proprietary trading, who currently qualify for registration by passing the Series 7 Examination and have registered in Web CRD as Proprietary Traders will have their registration converted in Web CRD on January 4, 2016 to a Securities Trader without having to take any additional examinations and without having to take any other actions. However, the registration of individuals who have taken the Series 7 Examination will not be converted to a Securities Trader if they have not registered as a Proprietary Trader in Web CRD by December 28, 2015. After that date, these individuals would be required to take the Series 57 Examination in order to register as Securities Traders as the Series 7 Examination would no longer serve as a qualifying exam to engage solely in proprietary trading on the Exchange. In addition, individuals registered as Proprietary Traders in Web CRD prior to the effective date of the proposed rule change will be eligible to register as Securities Traders without having to take any additional examinations, provided that no more than two years have passed between the date the individual last registered as a Proprietary Trader and the date the individual registers as a Securities Trader.<sup>8</sup>

In addition, the Exchange proposes to amend Rule 345 – Equities to create a new category of limited representative Principal – the Securities Trader Principal. Registration as a Securities Trader Principal would be restricted to individuals whose supervisory responsibilities are limited to Securities Traders, as defined in amended Supplementary Material .10 to Rule 345 - Equities. As proposed, a supervisor of a Securities Trader must satisfy its registration requirements under Supplementary Material .10 to Rule 345 – Equities by registering and

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<sup>8</sup> See Rule 345A - Equities, Commentary .30.

qualifying as a Securities Trader Principal in Web CRD if (a) such supervisor's supervisory responsibilities are limited solely to supervising Securities Traders; (b) such supervisor is qualified to be so registered by passing the General Securities Principal Qualification Examination - Series 24; and (c) such supervisor is registered pursuant to Exchange Rules as a Securities Trader. Under the proposed rule change, a Securities Trader Principal would not be qualified to function in a Principal or supervisory capacity with responsibility over any area of business other than that involving proprietary trading.<sup>9</sup>

The Exchange notes that in order to currently qualify as a Proprietary Trader Principal, an associated person must pass the Series 7 Examination and the Series 24 Examination. Once the Series 57 Examination becomes the qualifying exam for a Securities Trader, associated persons would need to pass the Series 57 Examination and the Series 24 Examination in order to register as a Securities Trader Principal. Only those individuals who are registered as such would be qualified to supervise a Securities Trader. Individuals registered as a General Securities Principal would not be qualified to supervise a Securities Trader, nor would a Securities Trader Principal be able to act as a General Securities Principal, unless the individual is appropriately registered as a Securities Trader Principal and a General Securities Principal.

Further, registered persons are required under Rule 345A - Equities to comply with the Exchange's continuing education requirements. Specifically, under Rule 345A – Equities(a)(1), no Member may permit any registered person to continue to, and no registered person may continue to, perform duties as a registered person, unless such person has complied with the Exchange's continuing education requirements. The Exchange proposes to amend the rule to specifically require each registered person who is qualified solely as a Securities Trader to

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<sup>9</sup> The proposed rule is similar to NYSE MKT LLC Rule 341, Commentary .01(e) and NYSE Arca, Inc. Rule 2.23(b)(3)(B).

comply with the continuing education requirements appropriate for the Series 57.<sup>10</sup>

Within 30 days of filing the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the operative date of the rule change, which will not be sooner than January 4, 2016.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),<sup>11</sup> in general, and furthers the objectives of Section 6(c)(3)(B)<sup>12</sup> of the Act, pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons, and Section 6(b)(5)<sup>13</sup> of the Act, in particular, in that it is designed, among other things, to promote just and equitable principles of trade, 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 believes that the proposed rule change to make the Series 57 Examination the qualifying exam for individuals engaged solely in proprietary trading is appropriate because the Series 57 Examination addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for such individuals to appropriately register under Exchange rules. In addition, the Series 57 Examination is expected to be shared by other exchanges and become the industry standard.<sup>14</sup> Accordingly, adopting the Series 57 Examination will help to promote consistency in examination requirements and uniformity

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<sup>10</sup> Registered persons will be required to complete the S101 Program to fulfill the Regulatory Element of their continuing education requirement.

<sup>11</sup> 15 U.S.C. § 78f(b).

<sup>12</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>13</sup> 15 U.S.C. § 78f(b)(5).

<sup>14</sup> See supra, note 7.

across markets.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not impose any additional examination burdens on persons who are already registered. There is no obligation to take the Series 57 examination in order to continue in their present duties, so the proposed rule change is not expected to disadvantage current registered persons relative to new entrants in this regard.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

19b4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-99 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2015-99. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).



review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-99 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Robert W. Errett  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).