

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66462; File No. SR-NYSE-2012-06)

February 24, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Definition of Approved Person to Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 14, 2012, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

In its filing with the Commission, the self-regulatory organization included

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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.

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

The Exchange proposes to amend the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. Following approval of the proposed rule change, the Exchange will advise member organizations of the implementation date of the rule change via Information Memo.

Background

The current rules governing the definition of and application process for an approved person are NYSE Rules 2 and 304. If the definition requirements under NYSE Rule 2 are met, then the person or entity has to apply to the Exchange for approval to register as an approved person. This requirement is intended to bring certain affiliates of Exchange member organizations within the Exchange's jurisdiction and to subject such affiliates' activities to Exchange rules to the extent their activities are related to the activities of the member organization.

NYSE Rule 2(c) defines the term "approved person" as "a person, other than a member, principal executive or employee of a member organization, who controls a member organization or is engaged in a securities or kindred business that is controlled

by or under common control with a member or member organization who has been approved by the Exchange as an approved person.” NYSE Rule 2(d) further defines “person” to include not only natural persons, but also corporations, limited liability companies, partnerships, associations and other organized groups of persons. NYSE Rule 2(e) defines the term “control” to mean the power to direct or cause the direction of management or policies, whether through ownership of securities, by contract or otherwise, and creates a rebuttable presumption of control if the person has a right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner, or principal executive of the member organization. NYSE Rule 2(f) defines “engage in a securities or kindred business” to mean transacting business as a broker or dealer in securities. Thus, the current definition of approved person includes a foreign affiliate of a member organization that is engaged in a broker-dealer business, but does not include, for example, a registered investment company. NYSE Rules 2A(e) and (f) further provide that the Exchange has jurisdiction after notice and a hearing to discipline approved persons in connection with the member organization’s business and has jurisdiction over any and all other functions of approved persons in connection with the member organization’s business in order for the Exchange to comply with its statutory obligation as a self-regulatory organization (“SRO”).

NYSE Rules 304 and 311(a) require, with limited exceptions, that persons who meet the NYSE Rule 2(c) definition of an approved person must apply for approval by the Exchange as an approved person. NYSE Rule 304 further provides that no person may become or remain an approved person unless such person meets the standards prescribed in the Exchange’s rules, and it prescribes the process that an applicant must

follow to become an approved person. Among other things, this process involves submission to the Exchange of a completed Form AP-1 (in the case of a corporation or other legal entity) or Forms AD-G 2 and AD-G 3 (in the case of a natural person, collectively referred to as “AD-G”), and other pertinent information regarding the candidate for approval. By executing the Form AP-1 or AD-G, as applicable, the approved person affirmatively consents to the Exchange’s jurisdiction.

#### Proposed Rule Change

The Exchange proposes to amend the definition of approved person in NYSE Rule 2 to revise the definition of which entities are deemed to be under “common control” with a member organization. The Exchange believes that the current definition, which includes certain foreign affiliates, is overbroad and it is unnecessary to assert jurisdiction over a foreign affiliate of a member organization that does not control a member organization. The Exchange notes that excluding such foreign affiliates from its jurisdiction would be consistent with Rule 19g2-1 under the Securities Exchange Act of 1934, as amended (the “Act”), which provides that an exchange is not required to enforce compliance with its rules against certain persons;<sup>4</sup> the Exchange has not identified a rule

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<sup>4</sup> See 17 CFR 240.19g2-1. Under Rule 19g2-1, a national securities exchange is not required to enforce compliance, within the meaning of Section 19(g) of the Act, with the Act and the rules and regulations thereunder, to [sic] with respect to persons associated with a member, other than securities persons or persons who control a member. Under Rule 19g2-1(b)(1), a “securities person” is defined as a “person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; provided, however, that a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association.” A foreign

of any other SRO that asserts jurisdiction over a foreign affiliate under common control with a member of that SRO. As such, the Exchange proposes to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

By changing the definition of approved person to exclude certain foreign affiliates, the Exchange does not intend to eliminate certain controls in Exchange rules related to potential conflicts of interest associated with having a foreign affiliate under common control with a member organization. Accordingly, the Exchange proposes several amendments to its Rules. First, the Exchange proposes to amend paragraphs (3) and (4) of NYSE Rule 21 to provide that a member of the Exchange's Board of Directors or an authorized committee who is associated with a member organization cannot participate in the deliberations concerning the listing of a security if the Director knows that an affiliate of the member organization directly or indirectly owns one percent or more of any class of stock of the issuer or has a contract, option, or privilege to purchase the security to be listed. Second, the Exchange proposes to amend NYSE Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties.

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broker-dealer not registered in the United States that is under common control with an NYSE member organization falls outside of the definition of "securities person."

Third, the Exchange proposes to amend NYSE Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (“DMM”) unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit’s member organization. Finally, the Exchange proposes to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.<sup>5</sup>

The Exchange also proposes to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person. If a person meets the definition of an approved person, as proposed, the Exchange will obtain jurisdiction by consent as described below. The Exchange believes that the current application process requires the submission of a substantial amount of information and documents related to member organization affiliates that is unnecessary to carry out the Exchange’s regulatory responsibilities. In particular, because the Exchange is no longer the Designated Examining Authority (“DEA”) for Exchange member organizations,<sup>6</sup> the

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<sup>5</sup> The Exchange does not believe any amendment to NYSE Rules 22, 91, 96, 112, 422, 410A, 460, or 1301 is necessary as a result of the proposed rule change; the Exchange believes such Rules would continue to be consistent with the requirements of the Exchange Act and the manner in which such they address potential conflicts of interest is appropriate under the circumstances.

<sup>6</sup> Prospective member organization applicants must be either a member of FINRA or, if the applicant does not transact business with public customers or conduct business on the Floor of the Exchange, a member of another registered securities exchange, before being approved as an Exchange member organization. See NYSE Rule 2(b)(i). Generally, FINRA or the other exchange already is, or will be, designated as the DEA under SEC Rule 17d-1 and the Exchange will not be

Exchange does not believe that it needs to engage in a detailed financial review of approved persons of its member organization applicants. The Exchange further notes that other SROs do not require that such persons undergo such an application and approval process.<sup>7</sup> The Exchange, therefore, proposes to remove all references to an approval process and the submission of an application for such approval from NYSE Rules 304, 308, and 311. The Exchange also would eliminate use of the Forms AP-1 and AD-G.

Nevertheless, the Exchange's jurisdiction over approved persons in accordance with the revised definition would remain. Thus, the Exchange proposes to amend NYSE Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. Specifically, an approved person would continue to have to agree to (i) inform the Exchange of any statutory disqualification of the approved person under Section 3(a)(39) of the Act, (ii) abide by the Rules of the Exchange relating to approved persons, and (iii) permit examination by the Exchange, or any person designated by it, of its books and records to verify the accuracy of the information required to be supplied under Exchange Rules.<sup>8</sup>

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designated as such. Currently, the Exchange is not the DEA for any of its member organizations, but if it were designated as the DEA, the Exchange has retained FINRA to perform services related to meeting the Exchange's DEA responsibilities for a member organization.

<sup>7</sup> For example, the rules of FINRA and The NASDAQ Stock Market, Inc. do not impose application and approval requirements on member affiliates. See also note 9, infra.

<sup>8</sup> The Exchange proposes to eliminate the text in current Rule 304(e)(1), which requires an approved person to supply information concerning its relationship with the member organization. This provision relates to information required to be submitted on Form AP-1 or AD-G, and as such it is not necessary to retain it in proposed Rule 304.

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.<sup>9</sup>

The Exchange also proposes to make technical and conforming changes to other rules. Specifically, the Exchange proposes to amend Rule 476A, which addresses minor rule violations, to correct a citation to Rule 304. The Exchange further proposes to make technical amendments to replace the term “allied member” with “principal executive” in Rules 21, 22, 91, 96, 112, 308, 410A, 422, 460, and 1301 and NYSE Rule Interpretation for Rule 304, delete “allied member” from Rule 304A, and delete NYSE Rule Interpretation for Rule 304A entirely; the Exchange replaced the term “allied member” with the term “principal executive” in an earlier rule filing and the proposed amendments

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<sup>9</sup> The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. See FINRA Regulatory Notice 10-01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.



are consistent with the previous rule filing.<sup>10</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>12</sup> 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 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. More specifically, the NYSE believes that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards. As such, the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

### 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.

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<sup>10</sup> See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

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

III. 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-06 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2012-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-NYSE-2012-06 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).