

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83740; File No. SR-NYSE-2018-33)

July 30, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 2 to Remove Requirement that a Registered Broker-Dealer be a Member of the Financial Industry Regulatory Authority, Inc. or Another National Securities Exchange

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 25, 2018, 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 Rule 2 to remove a requirement that a registered broker-dealer be a member of the Financial Industry Regulatory Authority, Inc. or another national securities exchange. The proposed rule change is available on the Exchange’s website at 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

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 “member organization” under Rule 2 (“Member,” “Membership,” “Membership [sic] Firm,” etc.) to remove a requirement that a registered broker-dealer seeking to be a member organization be a member of FINRA or another national securities exchange. In 2007, the Exchange amended Rule 2 to require FINRA membership as part of the consolidation of member firm regulatory functions of then NASD and NYSE Regulation, Inc. (“NYSE Regulation”) that resulted in a combined self-regulatory organization (“SRO”) that is now known as FINRA.⁴ As part of the consolidation, NYSE Regulation and NASD sought to harmonize certain of their member firm rules. At that time, it was anticipated that the rule harmonization would not be completed by the time NASD and NYSE Regulation completed their combination. Therefore, the combination contemplated a transition period during which FINRA would apply to NYSE member organizations the member firm rules of the NYSE. A necessary part of this transition was for NYSE to require all NYSE member organizations to become FINRA members.⁵ Prior to this time, FINRA membership was not a condition to become member organizations on the Exchange.

Subsequently, to enable more broker-dealers to become member organizations, the Exchange further amended Rule 2 to broaden the definition of “member organization” to include

⁴ See Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR-NYSE-2007-67).

⁵ Id.

a registered broker-dealer that is not a member of FINRA but is a member of another national securities exchange.⁶ Rule 2 repeats the requirement in Section 15(b)(8) of the Act⁷ that requires member organizations that transact business with the public to be a member of FINRA. In addition, Rule 2 requires member organizations that conduct business on the Floor of the Exchange to be a member of FINRA, which is a requirement unique to the Exchange.⁸

On June 14, 2010, the NYSE, NYSE Regulation,⁹ and FINRA entered into a Regulatory Services Agreement, whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by the NYSE. Pursuant to the Regulatory Services Agreement, FINRA had been performing Exchange enforcement-related regulatory services, including investigating and enforcing violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. In October 2014, the Exchange announced that, upon expiration of the current Regulatory Services Agreement on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated. Accordingly, as of January 1, 2016, the Exchange began to perform certain of the market surveillance, investigation and enforcement functions that FINRA was retained to perform in 2010.

As a result of the reintegration of these various regulatory functions, the Exchange proposes to make membership more readily available to registered broker-dealers that are not

⁶ See Securities Exchange Act Release No. 60318 (July 16, 2009), 74 FR 36797 (July 24, 2009) (SR-NYSE-2009-63).

⁷ 15 U.S.C. 78q(b)(8).

⁸ Id.

⁹ See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).

FINRA members or members of another national securities exchange. As proposed, the term “member organization” under Rule 2(i) would be defined as “a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the ‘Act’), including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability corporations, approved by the Exchange pursuant to Rule 311.” This proposed rule text is based in part on NYSE Arca, Inc. (“NYSE Arca”) Rule 2.3(a), which similarly provides that membership on that exchange “may be held by any entity which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies.”¹⁰ The Exchange proposes to include a cross reference to Rule 311, which is the rule that governs formation and approval of an exchange member organization.

The Exchange believes that the proposed change to the definition of “member organization” can be made without any regulatory impact because member organizations will continue to be subject to a comprehensive regulatory regime regardless of whether they are a member of another SRO or not. As discussed above, the Exchange did not require member organizations to also be members of FINRA prior to 2007 and only required FINRA membership as part of the combination of NASD and NYSE Regulation staff to form FINRA. The Exchange later contracted with FINRA to perform certain market surveillance, investigation and enforcement functions on behalf of the Exchange.¹¹ However, since January 1, 2016, the Exchange is once again directly performing certain of those previously outsourced regulatory functions. For instance, the Exchange surveils and examines member organizations for

¹⁰ See also NYSE Arca Rule 1.1(n).

¹¹ See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).

compliance with its own rules and provisions of the federal securities laws governing various matters, including sales practices and trading activities and practices. The Exchange also investigates and enforces violations of Exchange rules and conducts disciplinary proceedings arising out of such enforcement actions. FINRA continues to perform, pursuant to a Regulatory Services Agreement with the Exchange, investigations and enforcement of matters arising from FINRA's cross-market surveillances, as well as from its examination of members of the NYSE.

The reasons behind initially requiring FINRA membership no longer exist. As it does today, and as was the case prior to 2007, the Exchange performs the necessary regulatory oversight of member organizations as outlined above. For those member organizations that are FINRA members, they will continue to be regulated pursuant to the terms of an existing allocation plan pursuant to Rule 17d-2 of the Act between FINRA¹² and the Exchange for compliance with common FINRA and Exchange rules. Under the oversight of the NYSE's regulatory unit, FINRA will continue to perform certain regulatory services pursuant to the Regulatory Services Agreement, including certain membership application review services, registration, testing, and continuing education services, education and training services, examination services, surveillance and investigation services, disciplinary services, ancillary regulatory services, and audit services for the Exchange.¹³

¹² See Securities Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., New York Stock Exchange LLC, NYSE Regulation, Inc. and NYSE Amex LLC). See, e.g., Securities Exchange Act Release Nos. 78473 (August 3, 2016), 81 FR 52722 (August 9, 2016) (Multiparty 17d-2 Plan Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules); and 79928 (February 2, 2017), 82 FR 9814 (February 8, 2017) (Regulation NMS Multiparty 17d-2 Plan).

¹³ The Exchange has also entered into Regulatory Services Agreements with FINRA covering member compliance with the Tick Size Pilot Program's data collection and

Rule 17d-1 of the Act authorizes the Commission to name a single SRO as the Designated Examining Authority (“DEA”) to examine members of more than one SRO (“common member”) for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.¹⁴ The NYSE does not currently act as the as the DEA for any member organization. Should the NYSE be assigned by the Commission as the DEA for a member organization and, therefore be required to examine that member organization for compliance with the financial responsibility requirements pursuant to Rule 17d-1 of the Act, FINRA will perform those duties on behalf of the Exchange pursuant to the same Regulatory Services Agreement and under the continued oversight of the NYSE’s regulatory unit.¹⁵

reporting requirements as well as for investigations and enforcement activities related to insider trading.

¹⁴ 17 CFR 240.17d-1. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices, which the Exchange will retain and continue to perform.

¹⁵ Though FINRA would examine member organizations for which NYSE is the DEA on the NYSE’s behalf, the NYSE would remain responsible under Rule 17d-1 to ensure that FINRA performs those regulatory duties in compliance with Act under the Regulatory Services Agreement. The Exchange notes that its affiliates, NYSE American LLC and NYSE Arca, Inc., have both been named by the Commission as DEAs for certain of their members and that FINRA examines those members as required by Rule 17d-1 of the Act pursuant to a Regulatory Services Agreement. In addition, Cboe Exchange, Inc. and Cboe C2 Exchange, Inc. (collectively, “Cboe”) have also entered into Regulatory Services Agreements with FINRA under which FINRA performs, among other things, examination functions of Cboe members for which Cboe is DEA on Cboe’s behalf. See, FINRA Signs Regulatory Services Agreement with CBOE and C2, available at <http://www.finra.org/newsroom/2014/finra-signs-regulatory-services-agreement-cboe-and-c2>, dated December 22, 2014. See also, CBOE and C2 Enter into Agreements with FINRA Involving Regulatory Services, available at <http://ir.cboe.com/press-releases/2014/dec-22-2014>, dated December 22, 2014. See Regulatory Services, FINRA Exchange Solutions, available at <http://www.finra.org/industry/regulatory-services> for a list of exchanges that FINRA provides examination services on behalf of.

The Exchange also proposes to make various related changes to the rule. Because Section 15(b)(8) of the Act¹⁶ requires broker-dealers that transact with the public to be FINRA members, the Exchange proposes to remove this requirement from its definition of member organization as redundant. Consistent with the proposed amendment, Rule 2(i) would also no longer require that a member organization that conducts business on the Floor of the Exchange to [sic] be a FINRA member. The Exchange also proposes to amend paragraph (ii) of Rule 2 to remove references to being a member of FINRA or another national securities exchange. These provisions and references to FINRA would no longer be necessary in the Exchange's rules since membership in FINRA, or another SRO, would no longer be required as a condition to becoming a members [sic] organization on the Exchange. Those member organizations that transact business with the public would, however, continue to be required to be members of FINRA pursuant to Section 15(b)(8) of the Act.¹⁷

The definition of “member organization” under Rule 2 will continue to require a registered broker or dealer to be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof.

The Exchange proposes to delete the last sentence of Rule 2(i), which currently provides that member organizations include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof. The Exchange does not currently have any natural persons that are member organizations of the Exchange, and, therefore, removing this language would not impact any current member organizations. The Exchange further believes that the addition of the reference to “sole proprietor” to Rule 2(i)

¹⁶ 15 U.S.C. 78q(b)(8).

¹⁷ Id.

would address any natural persons that seek to be approved as a member organization in the future. In addition, removing this sentence would also further harmonize the Exchange's membership requirements with its affiliate, NYSE Arca.¹⁸

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(5) of the Act,²⁰ in particular, because 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest by expanding the number of registered brokers-dealers that would be eligible to become NYSE member organizations and trade on the Exchange, while maintaining high regulatory standards and a comprehensive regulatory regime with respect to such firms. The Exchange notes that it did not require member organizations to also be members of FINRA prior to 2007. It only subsequently required FINRA membership to accommodate a transition period as part of the combination of NASD and NYSE Regulation to form FINRA.

¹⁸ See supra note 9.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

Since that time, the Exchange reintegrated numerous regulatory function performed by FINRA.²¹ The reasons behind initially requiring FINRA membership no longer exist.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because member organization will continue to be subject to a comprehensive, mature, and rigorous regulatory program, regardless of whether they are members of FINRA or another SRO. As mentioned above, the Exchange will perform the necessary regulatory oversight of member organizations, as it did prior to 2007. Certain of the Exchange's regulatory obligations with respect to member organizations that are FINRA members are allocated to FINRA pursuant to the terms of allocation plan under Rule 17d-2 of the Act between FINRA and the Exchange.²² For those member organizations that are not FINRA members, the Exchange will provide for certain of its regulatory responsibilities, including, if applicable, DEA responsibilities, pursuant to an existing Regulatory Services Agreement between the Exchange and FINRA.²³

The proposed rule change would also contribute to perfecting the mechanism of a free and open market and a national market system, which outcomes are also consistent with the protection of investors and the public interest by aligning NYSE membership requirements more closely with those of the Exchange's affiliate, NYSE Arca.²⁴ In addition, the proposed rule change is not without additional precedent. For example, the rules of the Cboe do not require

²¹ FINRA continues to perform pursuant to a Regulatory Services Agreement with the Exchange investigations and enforcement of matters arising from FINRA's cross-market surveillances, as well as from its examination of members of the NYSE.

²² See supra note 12.

²³ See supra notes 14 and 15 and accompanying text.

²⁴ See supra note 9 and accompanying text.

membership in FINRA or on another SRO to be a Trading Permit Holder on Cboe.²⁵ Finally, no federal securities law requires that a broker-dealer be a member of more than one national securities exchange or SRO (e.g., FINRA).²⁶ The Exchange's proposal would merely remove the requirement under its rules that broker-dealers be members of another SRO when they are not otherwise required to do so.

The proposed rule change would also not unfairly discriminate between or among market participants because both current and prospective members would be subject to the rule. All member organizations would be regulated in the same manner by the Exchange should they be a member of another SRO or not.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to have a competitive impact because it is not intended to attract additional business to the Exchange. It is simply intended to align the definition of "member organization" with that of its affiliates [sic] and similar definitions of other national securities exchanges while ensuring the member organizations continue to be subject to comprehensive regulatory oversight. This proposal should also move to harmonize the membership requirements between the exchange and its affiliate NYSE Arca, thereby avoiding potential confusion.²⁸

²⁵ See Cboe Rules 3.2 and 3.3.

²⁶ See generally 15 U.S.C. 78o.

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See supra note 9 and accompanying text.

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 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 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. Please include File Number SR-NYSE-2018-33 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 Number SR-NYSE-2018-33. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSE-2018-33 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.²⁹

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).