

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50177; File No. SR-NYSE-2004-33)

August 10, 2004

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Amend Exchange Rule 345A (“Continuing Education for Registered Persons”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) 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 NYSE. On August 4, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.³ 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 NYSE Rule 345A (“Continuing Education for Registered Persons” or the “Rule”) to rescind all currently effective exemptions from required participation in the Regulatory Element programs. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 3, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE made technical corrections and clarifications to the filing.

Rule 345A.

Continuing Education For Registered Persons

(a) Regulatory Element - No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

(1) Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, also known as the "base date", shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)-(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 342 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection

(a)(3)(i)-(ii) of this Rule.

In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)-(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2) – No Change

(3) [Re-entry into program] Disciplinary Actions --Unless otherwise determined by the

Exchange, a registered person will be required to [re-enter] re-take the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (see also Rule 346(f));

(ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered pursuant to a disciplinary proceeding to [re-enter] re-take the Regulatory Element [continuing education program] by any securities governmental agency or securities self-regulatory organization.

[Re-entry] A re-taking of the Regulatory Element shall commence with [initial] participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the completion of the sanction or the disciplinary action becoming final, in the case of (ii) and (iii) above. The date that the disciplinary action

becomes final will be deemed the person's [initial registration anniversary] new base date for purposes of this Rule.

(b)(1) – .50 – No Change

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 NYSE 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 these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Rule 345A provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the continuing education requirement set forth in this Rule. As described in more detail below, the Regulatory Element component of NYSE Rule 345A⁴ requires registered persons to complete a standardized compliance-based program at prescribed intervals. NYSE Rule 345A also provides for the Firm Element component of continuing education,⁵ requiring “covered registered

⁴ See NYSE Rule 345A(a).

⁵ See NYSE Rule 345A(b). The Firm Element applies to any registered person who has direct contact with customers in the conduct of a member’s or member organization’s securities sales, trading or investment banking activities, and to the immediate supervisors of such persons, and to registered persons who function as supervisory

persons” to regularly participate in specialized programs designed to enhance their professional skills.

NYSE proposes to rescind all currently effective exemptions from required participation in Regulatory Element programs.

Background

The Regulatory Element currently requires each subject registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. The purpose is to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. There are three Regulatory Element programs: The S201 Supervisor Program, the S106 Series 6 Program, and the S101 General Program for Series 7 and all other registrations. Persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

“Grandfathered” Exemptions

Persons who were continuously registered, without a serious disciplinary action,⁶ for more than ten years as of the Rule’s effective date (i.e., July 1, 1995) were initially, and continue to be, exempt from Regulatory Element requirements.

analysts, and research analysts as defined in NYSE Rule 344 (collectively “covered registered persons”).

⁶ For purposes of NYSE Rule 345A, a “disciplinary action” includes statutory disqualification as defined in Section 3(a)(39) of the Act; suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element program. See Rule 345A(a)(3)(i) – (iii).

“Graduated” Exemptions

The Rule initially required that subject registered persons complete a Regulatory Element program on their second, fifth, and tenth registration anniversary dates. Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a serious disciplinary event). For instance, a person who became registered July 2, 1985 could “graduate” from future Regulatory Element obligations by completing a single program in July 1995, thereby satisfying their tenth anniversary requirement.

Amendments to NYSE Rule 345A discontinued this “graduation” exemption as of July 1998,⁷ but registered persons who were “graduated” prior to these amendments continue to be exempt from Regulatory Element requirements. Of approximately 685,000 actively registered persons, about 135,000 are currently exempted from ongoing Regulatory Element obligations.

Discussion and Proposal

Initially, the rationale for the Regulatory Element exemptions was that, because the material to be covered would involve regulatory subject matter, individuals registered for more than ten years without a significant disciplinary action were, by virtue of their business tenure, sufficiently familiar with applicable regulatory requirements. Currently, if an exempted person becomes subject to a significant disciplinary action, the Rule requires “re-entry” into the Regulatory Element program.⁸

As part of its ongoing commitment to communicate and reinforce the importance of compliance with just and equitable principles of trade, the Exchange, on behalf of the Securities

⁷ See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998)(File No. SR-NYSE-97-33).

Industry/Regulatory Council on Continuing Education (the “Council”),⁹ is in the process of developing a Regulatory Element module that focuses specifically on ethics. Although Regulatory Element programs have consistently included ethical considerations in a variety of business scenarios, it has been determined that the importance of ethical conduct should be more prominently featured and more emphatically stressed in the Regulatory Element. Accordingly, participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. In addition, there have been significant new Exchange and industry rules, growth in the types of products and services offered by firms, and areas of regulatory emphasis which the Regulatory Element covers in its curriculum. Subjecting persons who have been exempt from this requirement will be beneficial to them and their firms, as it will help keep them current and knowledgeable on such changes.

Consistent with this new emphasis, the Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs. Accordingly, the Council recommended at its December 2003 meeting that SRO Rules (e.g., NYSE Rule 345A) be amended to eliminate existing exemptions from the Regulatory Element

⁸ See Rule 345A(a)(3).

⁹ As of the date of this filing, the Council consisted of eleven representatives from securities firms and representatives from six self-regulatory organizations (“SROs”) including: The NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers (“NASD”), and the Philadelphia Stock Exchange. The SEC and The North American Securities Administrators Association have liaisons to the Council. See Amendment No. 1, supra note 3.

and to require all “grandfathered” and “graduated” persons to fully participate in future standardized continuing education programs, according to the Rule’s prescribed schedule.¹⁰

The NYSE believes that NASD and other SRO Council members are likewise pursuing amendments to their respective rules. The Exchange will coordinate with the staffs of these SROs so that all such amendments are harmonized.

Due to changes that would have to be made to the CRD System, the proposed amendments are expected to become effective on April 4, 2005. Application of the proposed amendments would be based on existing requirements of NYSE Rule 345A(a). As noted above, subject registered persons must complete their Regulatory Element requirement within 120 days of the second anniversary of their initial registration or “base date,” and every three years thereafter. Accordingly, those registered persons who were eligible for “grandfathered” or “graduated” exemptions would be required to complete the Regulatory Element as their prescribed anniversaries occur on or after April 4, 2005. For example, a person whose initial registration date is April 4, 1985 would have to complete their Regulatory Element requirements within 120 days of April 4, 2005. A person whose initial registration date is July 1, 1983 would have to complete their Regulatory Element requirements within 120 days of July 1, 2006. Within 120 days of April 4, 2008, all currently exempt registered persons will have been brought back into the Regulatory Element cycle. Should the necessary CRD System changes be delayed, the effective date would be within 30 days of the implementation of such changes. In any case, NYSE membership will be notified via an Information Memo.

¹⁰ See proposed NYSE Rule 345A(a)(1). Note that the proposed amendments renumber existing paragraphs of the Rule; the Rule’s prescribed schedule is currently found in NYSE Rule 345A(a).

It is noted that a person's base date may be revised to be the effective date of a significant disciplinary action in accordance with NYSE Rule 345A(a)(3). NYSE Rule 345A(a)(3) has been amended to clarify that a person subject to a significant disciplinary action would be required to "re-take" rather than "re-enter" the Regulatory Element." A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member organization by qualification exam.

2. Statutory Basis

The statutory basis for this proposed rule change is Section 6(c)(3)(B)¹¹ of the Exchange Act.¹² Under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange is rescinding all currently effective exemptions from required participation in the Regulatory Element programs provided by NYSE Rule 345A.

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.

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.

¹¹ 15 U.S.C. 78f(c)(3)(B).

¹² 15 U.S.C. 78(a).

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

Within 35 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 NYSE consents, the Commission will:

- (A) by order approve 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 proposed rule change, as amended, 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-2004-33 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-33. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. 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-2004-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).