

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66709; File No. SR-NYSE-2012-06)

April 2, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a 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

I. Introduction

On February 14, 2012, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change 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 proposed rule change was published for comment in the Federal Register on March 1, 2012.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed 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 proposed several additional amendments to its Rules. The Exchange proposed to amend paragraphs (3) and (4) of NYSE Rule 21 to provide that a

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 66462 (February 24, 2012), 77 FR 12626 (March 1, 2012) (“Notice”).

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. The Exchange proposed 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. The Exchange proposed 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. The Exchange proposed 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.

The Exchange also proposed to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person, and accordingly, 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 proposed to eliminate use of the Forms AP-1 and AD-G.

The Exchange proposed 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. The Exchange also proposed to make technical and conforming changes to other rules.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>6</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. The Exchange noted 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.<sup>7</sup> As such, the Exchange believes that the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> Notice, 77 FR at 12628.

open market and a national market system.<sup>8</sup> The Commission believes that the proposed rule change is consistent with the Exchange Act and should reduce the burdens on Exchange members while preserving the Exchange's jurisdiction over approved persons and maintaining appropriate controls over approved persons.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.<sup>9</sup>

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<sup>8</sup> Id.

<sup>9</sup> 15 U.S.C. 78c(f).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSE-2012-06) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).