

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 78371; File No. SR-NYSE-2016-43)

July 20, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for a New Rule 346 Prohibiting Association by Member Organizations, Principal Executives, Approved Persons, and Persons Associated with a Member Organization or Control Persons of Member Organizations with Persons Subject to a Statutory Disqualification

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 July 14, 2016, 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 add a new Rule 346 prohibiting association by member organizations, approved persons, and persons associated with a member organization or control persons of member organizations with persons subject to a statutory disqualification. 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.

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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.

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 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 a new Rule 346 prohibiting association by member organizations, principal executives, approved persons, and persons associated with a member organization or control persons of member organizations with persons subject to a statutory disqualification.

Background

In 2007, the Exchange and FINRA<sup>4</sup> entered into an agreement (the “Agreement”) pursuant to Rule 17d-2 under the Act to reduce regulatory duplication by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations (“FINRA Incorporated NYSE Rules”).<sup>5</sup> In order to reduce regulatory duplication and relieve firms that are members of

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<sup>4</sup> NYSE Regulation, Inc., a former not-for-profit subsidiary of the Exchange, was also a party to the Agreement by virtue of the fact that it performed regulatory functions for the Exchange pursuant to a delegation agreement. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11264-65 (March 6, 2006) (SR-NYSE-2005-77) (approving delegation agreement). The delegation agreement terminated on February 16, 2016, and NYSE Regulation has ceased providing regulatory services to the Exchange, which has re-integrated its regulatory functions.

<sup>5</sup> See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August

the Exchange and FINRA of conflicting or unnecessary regulatory burdens, FINRA has been reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.<sup>6</sup>

As part of the rule consolidation process, in 2010, FINRA adopted NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the consolidated FINRA rulebook. FINRA also deleted FINRA Incorporated NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and related interpretations.<sup>7</sup> In 2011, to correspond with the changes by FINRA, the Exchange adopted FINRA Rule 3270 as NYSE Rule 3270 and deleted Rule 346 in its entirety.<sup>8</sup>

Prior to its deletion in 2011, subdivision (f) of Rule 346 provided that, unless permitted by the Exchange, no member, member organization, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any

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1, 2007) (SR-NASD-2007-054) (order approving the incorporation of certain NYSE Rules as “Common Rules”). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA or the Exchange to the substance of any of the Common Rules.

<sup>6</sup> FINRA’s rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

<sup>7</sup> See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (SR-FINRA-2009-042) (“Release No. 62762”).

<sup>8</sup> See Securities Exchange Act Release No. 64131 (March 28, 2011), 76 FR 18285 (April 1, 2011) (SR-NYSE-2011-12) (“Release No. 64131”).

“statutory disqualification” defined in Section 3(a)(39) of the Act.<sup>9</sup> Because FINRA had previously amended its definition of disqualification in its By-Laws to align with the definition in the Act, FINRA deleted Rule 346(f) as redundant.<sup>10</sup> When the Exchange adopted FINRA Rule 3270 as NYSE Rule 3270, it deleted Rule 346 in its entirety, including subdivision (f).<sup>11</sup> The Exchange did not delete the associated rule interpretations, which the Exchange now proposes to delete.

#### Proposed Rule Change

The Exchange’s deletion of Rule 346(f) was inadvertent.<sup>12</sup> The Exchange accordingly proposes to reintroduce the standards contained in deleted Rule 346(f) as new Rule 346. In particular, proposed Rule 346 would provide that, except as otherwise permitted by the Exchange, no member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization shall have associated with it any person who

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<sup>9</sup> See Release No. 62762, 75 FR at 53363.

<sup>10</sup> Id. FINRA also deleted related NYSE Interpretations 346(e)/01 – 03.

<sup>11</sup> See Release No. 64131, 76 FR 18286.

<sup>12</sup> The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective member organizations and persons associated with a member organization. Since 2010, review, assessment, and processing of NYSE membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement. Although Rule 346(f) was inadvertently deleted in 2011, the Exchange continued to work with FINRA to seek disclosure of and identify persons subject to any statutory disqualification as defined in Section 3(a)(39) of the Act and take appropriate action in individual cases. For example, whenever Exchange staff has reason to believe that a disqualification exists or that a member organization or covered person otherwise fails to meet the eligibility requirements of the Exchange, the Exchange can issue a notice of disqualification or ineligibility under NYSE Rule 9522(a)(1). For purposes of Rule 9522, a “covered person” means a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the Exchange’s jurisdiction. See Rule 9521(g).

is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Act.

The proposed rule text is the same as former Rule 346(f) except that the proposed rule would not use the terms “member” or “employee.” Under Exchange rules, the term “member organization” means a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange.<sup>13</sup> The term “member” means a natural person associated with a member organization that has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.<sup>14</sup> A “member” is not a registered broker-dealer and does not have employees; only member organizations have employees. For purposes of the proposed change, the Exchange proposes to continue using the phrase “person associated with a member organization” to indicate employees of a member organization.<sup>15</sup> The proposed rule would also use the term “principal executives,” which replaced “allied members” in 2008.<sup>16</sup> The proposed rule is also substantially similar to Rule 342(e) of the Exchange’s affiliate, NYSE MKT LLC.<sup>17</sup>

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<sup>13</sup> See Rule 2(b)(i).

<sup>14</sup> See Rule 2(a).

<sup>15</sup> See, e.g., Rule 9000 Series.

<sup>16</sup> See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80).

<sup>17</sup> MKT LLC Rule 342(e) provides that “[e]xcept as otherwise permitted by the Exchange, no member, member organization, allied member, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Securities Exchange Act of 1934.” As noted previously, the NYSE eliminated allied members in 2008. See note 16, supra.

Finally, the Exchange proposes to delete NYSE Rule Interpretations 346(e)/01 – 03 as unnecessary in light of the adoption of Rule 3270 or duplicative of new proposed Rule 346.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and Section 6(b)(1) of the Act,<sup>19</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Specifically, the Exchange believes that reinstating deleted rule text prohibiting the association of member organizations and related persons with individuals meeting the definition of a “statutory disqualification” under the Act supports the objectives of the Act by enabling the Exchange to enforce the prohibitions contained therein regarding association with persons subject to a statutory disqualification, and is thus consistent with Section 6(b)(1).

For similar reasons, the Exchange believes that the filing furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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,

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(1).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

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. As discussed above, the Exchange believes that the reintroducing the prohibition on member organizations and related persons from associating with statutory disqualified persons that was inadvertently deleted would remove impediments to and perfect the mechanism of a free and open market by eliminating a regulatory disparity between the rules of the Exchange and FINRA, thereby also further harmonizing those rules. Finally, the Exchange believes that the proposed rule change would not be inconsistent with the public interest and the protection of investors because investors would not be harmed by the reintroduction of a rule previously approved by the Commission that reflects the Act's requirements regarding association with statutorily disqualified persons.

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

In accordance with Section 6(b)(8) of the Act,<sup>21</sup> 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. The proposed rule change is not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's requirements concerning statutory disqualification.

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.

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<sup>21</sup> 15 U.S.C. 78f(b)(8).

### 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>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</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>24</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>25</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>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2016-43 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-NYSE-2016-43. 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; 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-2016-43 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>27</sup>

Robert W. Errett  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).