

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78372; File No. SR-NYSE-2016-50)

July 20, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Regarding Payment of Compensation and Rebates, and Research Analyst Attestation Requirements, Harmonizing with Certain Financial Industry Regulatory Authority, Inc. Rules and Making other Conforming Changes

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 12, 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 amend its rules regarding (1) payment of compensation and rebates, and (2) research analyst attestation requirements in order to harmonize with certain Financial Industry Regulatory Authority, Inc. (“FINRA”) rules and make other conforming changes. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 amending its rules concerning (1) payment of compensation and rebates, and (2) research analyst attestation requirements in order to harmonize with certain FINRA rules and make other conforming changes. Specifically, the Exchange proposes to:

- delete Rule 353 (Rebates and Compensation),⁴ NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons), NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), adopt the text of FINRA Rule 2040 (Payments to Unregistered Persons) (including Supplementary Material .01) and add new Supplementary Material .02, and amend Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar) (including adding Supplementary Material .01) in order to harmonize its rules with FINRA's rules regarding the payment of

⁴ References to rules are to NYSE rules unless otherwise indicated.

- transaction-based compensation by members to unregistered persons;
- delete Rule 351 (Reporting Requirements) (including Supplementary Material .11 and .12) and amend Rules 472 (Communications With The Public) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to harmonize with FINRA’s rules regarding annual attestation requirements for research analysts; and
 - make certain technical and conforming changes.⁵

Background

In 2007, the Exchange and FINRA⁶ 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”).⁷ In order to reduce regulatory duplication and relieve firms that are members of 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

⁵ As discussed below, the conforming changes the Exchange proposes would substitute the term “member organization” for “member” and the term “Exchange” for “FINRA.”

⁶ 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.

⁷ 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 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.

consolidated FINRA rulebook.⁸

Payment of Transaction-Based Compensation

As part of the rule consolidation process, in 2014, FINRA adopted FINRA Rule 2040 regarding payment of transaction-based compensation by members to unregistered persons.⁹ The requirements of Incorporated NYSE Rule 353¹⁰ as well as Incorporated NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons), Incorporated NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders)¹¹ were consolidated into the new FINRA rule, and FINRA deleted Incorporated NYSE

⁸ 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.

⁹ See Securities Exchange Act Release Nos. 73210 (September 25, 2014), 79 FR 59322 (October 1, 2014) (SR-FINRA-2014-037) ("FINRA Notice") and 73954 (December 30, 2014), 80 FR 553 (January 6, 2015) (SR-FINRA-2014-37) ("FINRA Approval Order").

¹⁰ NYSE Rule 353(a) prohibits a member, principal executive, registered representative or officer from, directly or indirectly, rebating to any person any part of the compensation he receives from the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of the member, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any other member. NYSE Rule 353(b) further provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

¹¹ NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) prohibits member organizations from paying to nonregistered persons compensation based upon the business of customers they direct to the member organization if such compensation is, among other things, formulated as a direct percentage of commissions generated and is other than on an isolated basis. NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations) provides that a member organization that is also registered with the Commission as an investment adviser may enter into

Rule 353 and the Incorporated NYSE Rule 345 interpretations.¹²

In the same filing, FINRA amended FINRA Rule 8311 to eliminate duplicative provisions in NASD IM-2420-2 (Continuing Commissions Policy)¹³ and clarify the scope of the rule on payments by members to persons subject to suspension, revocation, cancellation, bar or other disqualification and added new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) expressly permitting a member to pay to any person subject to a sanction or disqualification any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment.¹⁴

Research Analyst Attestation Requirements

In 2011, the Exchange adopted FINRA Rule 4530 (Reporting Requirements) as NYSE Rule 4530. FINRA Rule 4530 was modeled in part on former NYSE Rule 351(a)-(d), which

arrangements that comply with Rule 206(4)-3 (Cash Payments for Client Solicitations) of the Investment Advisers Act. Finally, NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders) provides that member organizations may pay transaction-related compensation to nonregistered foreign finders, based upon the business of customers such persons direct to members, subject to identified conditions.

¹² See FINRA Approval Order, 80 FR at 555 & 557; see also FINRA Notice, 79 FR at 59327. The result was “one concise rule that outlines the applicable requirements for payments to non-members.” FINRA Approval Order, 80 FR at 557.

¹³ NASD IM-2420-2 allows members to pay continuing commissions to former registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. See FINRA Notice, 79 FR at 59326. Rule 353(b), on the other hand, provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

¹⁴ FINRA Approval Order, 80 FR at 556-57.

governed trade investigation reporting requirements.¹⁵ The Exchange retained Rule 351(f), which requires a letter of attestation signed by a principal executive that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472, that each research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2), and that the basis for such approval has been documented. At the time, the Exchange noted that NYSE Rules 351(f), 351.11 and 351.12 governing the annual attestation requirement would be addressed as part of the research analyst conflict of interest rules.¹⁶

In 2015, FINRA adopted FINRA Rule 2241 (Research Analysts and Research Reports), which deleted the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision.¹⁷ As FINRA explained in its filing, firms were already obligated pursuant to NASD Rule 3010 (Supervision) to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations and FINRA rules. Moreover, the research rules also were subject to the supervisory control rules (NASD Rule 3012) and the annual certification requirement regarding compliance and supervisory processes embodied in FINRA Rule 3130. As such, FINRA did not believe that a separate attestation requirement for the research rules was

¹⁵ See Securities Exchange Act Release No. 64785 (June 30, 2011), 76 FR 39946 (July 7, 2011) (SR-NYSE-2011-27).

¹⁶ See id. at 39946, n.8.

¹⁷ See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482, 43488 (July 22, 2015) (SR-FINRA-2014-047).

necessary.¹⁸

The attestation requirement in current Rule 351(f) is inconsistent with FINRA Rule 2241, thereby presenting member organizations that are also FINRA members with inconsistent requirements. Moreover, the Exchange has adopted FINRA Rules 3110, 3120 and 3130 as NYSE Rules 3110, 3120 and 3130.¹⁹ Exchange member organizations are therefore subject to the same supervisory requirements as FINRA member firms, including the annual certification requirement regarding compliance and supervisory processes in Rule 3130.

Proposed Rule Changes

Payment of Transaction-Based Compensation

Deletion of Rule 353 and Rule 345 Interpretations, and Adoption of FINRA Rule 2040

In light of FINRA's adoption of a comprehensive rule regarding the payment of transaction-based compensation, the Exchange proposes to adopt the text of FINRA Rule 2040 as NYSE Rule 2040 and delete Rule 353, the Exchange's current rule governing rebates and compensation, as well as NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03, which relate to compensation to non-registered persons, compensation paid for advisory solicitations, and compensation to non-registered foreign persons acting as finders, respectively. As noted above, the requirements of NYSE Rule 353 and the NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03 have been consolidated into the FINRA rule, making

¹⁸ See *id.* NASD Rules 3010 and 3012 referred to in the approval order were adopted with changes as FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System). See *id.*, n. 83; Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (SR-FINRA-2013-025).

¹⁹ See Securities Exchange Act Release No. 73554 (November 6, 2014), 79 FR 67508 (November 13, 2014) (SR-NYSE-2014-56) (adopting FINRA Rules 3110 and 3120); Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25) (adopting FINRA Rule 3130).

them redundant.²⁰ For consistency with Exchange rules, the Exchange proposes to: (1) change references to “members” in the text of FINRA Rule 2040 (including Supplementary Material .01) to “member organizations”; (2) change references to “FINRA” in the text of FINRA Rule 2040 (including Supplementary Material .01) to “the Exchange”; and (3) change the reference in Rule 2040(c)(1) to “disqualification as defined in Article III, Section 4 of FINRA's By-Laws” to “statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.” In addition, in order to ensure that proposed Rule 2040 and FINRA Rule 2040 are fully harmonized, the Exchange also proposes to add Supplementary Material .02 to proposed Rule 2040 to provide that, for purposes of the rule, the term “associated person” shall have the same meaning as the terms “person associated with a member” or “associated person of a member” as defined in Article I(rr) of the FINRA ByLaws. The proposed Rule is otherwise the same as its FINRA counterpart.

Amendment to Rule 8311 to Reflect Recent Amendments to FINRA Rule 8311

To reflect FINRA’s recent amendments to FINRA Rule 8311, the Exchange proposes certain amendments to NYSE Rule 8311 to fully harmonize the two rules. First, the Exchange proposes to delete the word “or” in the heading and add the phrase “or Other Disqualification.” The first paragraph would become subsection (a) and the text would be harmonized with FINRA Rule 8311(a).

Proposed Rule 8311(a) would clarify the scope of payments by member organizations to persons subject to suspension, revocation, cancellation, bar (each a “sanction”) or other disqualification and would provide that if a person is subject to a sanction or other disqualification, a member organization may not allow such person to be associated with it in

²⁰ See FINRA Approval Order, 80 FR at 555 & 557. See also notes 10-12 and accompanying text, supra. There are no associated Rule 353 interpretations.

any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. Proposed Rule 8311(a) would further provide that a member organization may not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue, not just earn, during the period of the sanction or disqualification. The Exchange also proposes to add a new sentence to proposed Rule 8311(a) providing that a member organization may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits an associated person from conducting specified activities (such as a suspension from acting in a principal capacity) or to a disqualified person that has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a member organization.

Further, the Exchange proposes to add a new subsection (b) and new proposed Supplementary Material .01 that, with the exception of conforming references to “members” in the text of FINRA Rule 8311 to “member organizations” and references to “FINRA” to “the Exchange,” would be identical to the recent amendments to FINRA Rule 8311.

The Exchange believes that the proposed Rule complements proposed Rule 2040 and would harmonize the Exchange’s rules on payments by member organizations to persons subject to suspension, revocation, cancellation, bar or other disqualification.

Research Analyst Attestation Requirements

Deletion of NYSE Rule 351(f) and Supplementary Material .11 and .12

In light of FINRA’s elimination of an annual attestation requirement when it adopted

FINRA Rule 2241,²¹ the Exchange proposes to delete NYSE Rule 351(f) and Supplementary Material .11 and .12, thereby eliminating inconsistent requirements for member organizations that are also FINRA members.²² As noted above, Exchange member organizations are also subject to the same supervisory requirements as FINRA member firms, including the annual certification requirement regarding compliance and supervisory processes in Rule 3130.

The Exchange proposes to mark the entire Rule as “Reserved” and delete headings (a) through (e) and Supplementary Material .10 and .13, which have no content and are marked “Reserved” and “Deleted,” respectively.

Conforming Changes

The Exchange proposes the following conforming changes. First, the Exchange would substitute the term “member organization” for “member”²³ and the term “Exchange” for “FINRA” in proposed Rule 2040 and in the changes proposed for Rule 8311. Second, the Exchange would delete references to Rule 351 in Rules 472(c) and (h), governing communications with the public, and 9217, which sets forth the rules included in the NYSE’s

²¹ See 80 FR at 43488.

²² The Exchange has not adopted FINRA Rule 2241. Under Rule 2(b)(i), member organizations that transact business with public customers must at all times be members of FINRA and, as such, would be subject to FINRA’s rules, including the requirements of Rule 2241.

²³ The term “member” has different meanings under FINRA and Exchange rules. Under FINRA Rule 0160(b)(10), a “member” means an individual, partnership, corporation or other legal entity admitted to membership in FINRA under Articles III and IV of the FINRA By-Laws. Article III, Sec. 1(a) generally limits membership to registered brokers, dealers, municipal securities brokers or dealers, or government securities brokers or dealers. NYSE’s equivalent term is “member organization.” See Rule 2(b)(i) (defining “member organization” as a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange). Under NYSE Rule 2(a), the term “member” means a natural person associated with a member organization who 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.

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2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,²⁴ in general, and Section 6(b)(5) of the Act,²⁵ in particular, because the proposed rule changes 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, 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 believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, adopting proposed Rule 2040 and amending Rule 8311 based on FINRA Rules 2040 and 8311 as well as deleting Rule 353 and NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03 would promote just and equitable principles of trade by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance.

Similarly, deleting Rule 351(f) and Supplementary Material .11 and .12 as inconsistent with FINRA Rule 2241 would eliminate inconsistent annual attestation requirements, resulting in less burdensome and more efficient regulatory compliance and promoting just and equitable

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(1).

principles of trade. The Exchange further believes that eliminating the annual attestation requirement would not be inconsistent with the Exchange's obligations under the Exchange Act to prevent fraudulent or manipulative acts and practices because Exchange member organizations are subject to the same supervisory requirements as FINRA member firms, including an annual certification requirement regarding compliance and supervisory processes set forth in Rule 3130. To the extent the Exchange has proposed changes that differ from the FINRA version of the Exchange rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed conforming changes will update and add specificity to the Exchange's rules, which will promote just and equitable principles of trade and help to protect investors.

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

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's requirements concerning payments to unregistered persons, the effect of suspensions, revocations, cancellations, bars or other disqualifications, and research analyst annual attestation requirements.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

²⁶ 15 U.S.C. 78f(b)(8).

the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸ 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)²⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁰ 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)³¹ of the Act to determine whether the proposed rule change should be approved or 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

³¹ 15 U.S.C. 78s(b)(2)(B).

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-2016-50 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-2016-50. 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-2016-50 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.³²

Robert W. Errett
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).