

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50404; File No. SR-NYSE-2004-33)

September 16, 2004

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

On June 28, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to rescind all currently effective exemptions from required participation in the Regulatory Element programs. On August 4, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on August 17, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NYSE Rule 345A currently 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.<sup>5</sup> The Regulatory Element component of NYSE Rule 345A requires each registered person to complete a

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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.

<sup>4</sup> See Securities Exchange Act Release No. 50177 (August 10, 2004), 69 FR 51134 (August 17, 2004).

<sup>5</sup> See NYSE Rule 345A(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. 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.

Currently, registered persons who were continuously registered, without a serious disciplinary action,<sup>6</sup> 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 under NYSE Rule 345A. The "graduated" exemption, although discontinued as of July 1998,<sup>7</sup> continues to apply to registered persons who were "graduated"<sup>8</sup> prior to the discontinuation of the exemption.

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), the NYSE submitted a proposed rule change to rescind all currently effective exemptions from required participation in Regulatory Element programs.<sup>9</sup> The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

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<sup>6</sup> 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).

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

<sup>8</sup> Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a serious disciplinary event).

<sup>9</sup> 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 and to require all "grandfathered" and "graduated" persons to fully participate in future standardized continuing education programs, according to the Rule's prescribed schedule. 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).

Proposed amendments are expected to become effective on April 4, 2005 due to changes that would have to be made to the CRD System. Should the necessary CRD System changes be delayed, the effective date would be within 30 days of the implementation of such changes. NYSE membership will be notified via an Information Memo.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act,<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

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<sup>10</sup> 15 U.S.C. 78f(6).

<sup>11</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSE-2004-33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).