

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52259; File No. SR-NYSE-2004-64)

August 15, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 thereto Relating to Proposed Changes to Exchange Rule 342 (“Offices – Approval, Supervision and Control”)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 2, 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 July 11, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁴ On August 12, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (“Amendment No. 2”).⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, which supplemented the original filing, the Exchange added its proposed Interpretive Handbook Interpretations 342.30(d)/01 and 342.30(e)/01 for purposes of clarifying issues related to the designation of a Chief Compliance Officer and the Annual Certification, respectively. The text of interpretations 342.30(d)/01 and 342.30(e)/01 is available on the NYSE’s Web site (www.NYSE.com), at the NYSE’s principal office, and at the Commission’s Public Reference Room.

⁵ In Amendment No. 2, which supplemented the original filing, the Exchange modified interpretation 342.30(e)/01 in order to clarify the obligations of member organizations in the preparation of annual certifications.

The proposed amendment to NYSE Rule 342.30 (“Annual Reports”) would: require each member organization (“Member Organization”) and each member not associated with a member organization (“Member”) to file with the Exchange the annual reports (“Annual Reports”) it is currently required to prepare, and in the case of a Member Organization, to submit to its Chief Executive Officer (“CEO”); add to the Annual Reports a required discussion of compliance efforts regarding anti-money laundering; require each Member Organization to designate a principal officer or general partner as Chief Compliance Officer (“CCO”); and require each Member and the CEO of each Member Organization to file a yearly statement confirming the adequacy of their compliance processes and procedures. The text of the proposed rule change is available on the NYSE’s Web site (www.NYSE.com), at the NYSE’s principal office, and at the Commission’s Public Reference Room.

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 changes. The text of these statements, as amended, may be examined at the places specified in Item IV below. The NYSE has 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

a. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of Members and Member Organizations. NYSE Rule 342.30, which was adopted on May 27, 1988, requires Members and Member Organizations to prepare an

Annual Report addressing specified compliance issues by April 1 of each year.

Currently, Member Organizations are required to submit this report only to their CEO or managing partner and Members are required only to prepare the report.

b. Provisions of the Proposed Rule Change

The proposed rule change makes the following changes relating to the Annual Reports:

- The Annual Reports must be filed with the Exchange by April 1 of each year.
- The anti-money laundering compliance programs required by Exchange Rule 445⁶ have been added to the list of specific areas of compliance that must be discussed in the Annual Reports.
- Member Organizations must designate a principal officer or general partner as CCO.⁷
- Each Member, and the CEO (or equivalent) of each Member Organization, must submit a certification attesting to the adequacy of their organization's compliance policies and procedures.⁸

c. Regulatory Purpose of Proposed Rule Change's Provisions

(i) Submission of Annual Reports to the Exchange

Filing the Annual Reports with the Exchange will provide timely information about the compliance efforts of Members and Member Organizations, thereby

⁶ NYSE Rule 445 requires Members and Member Organizations to develop and implement written anti-money laundering programs consistent with the Bank Secrecy Act (31 U.S.C. 5311, et seq. and Treasury Regulation 31 CFR 103.120).

⁷ The SEC recently approved a similar requirement in NASD's new Rule 3013. Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR-NASD-2003-176).

⁸ The SEC recently approved a similar requirement in NASD's new Rule 3013. See id.

strengthening and making more efficient the Exchange's regulatory oversight, and facilitating the required annual certifications (see below).

Because submission of the Annual Reports to the Exchange was previously not required, the reports were typically provided to the Exchange at the time of, or in connection with, examinations of Member Organizations and Members.⁹ Consequently, the Exchange did not always receive important information in a timely, efficient manner. Providing the reports to Exchange staff at annual intervals will afford the Exchange a timely picture of the Members' and Member Organizations' compliance issues from the preceding year, a tool for planning surveillance and examinations, and more comprehensive information for evaluation of compliance systems and programs and identification of potential regulatory problems.

(ii) Addition of Anti-Money Laundering Discussion to Annual Report

The USA Patriot Act¹⁰ substantially expanded federal anti-money laundering regulations, and led to the enhancement of Exchange anti-money laundering requirements through the adoption of NYSE Rule 445 in April 2002. The Exchange considers anti-money laundering compliance programs to be important enough to warrant consideration and discussion in the Annual Reports, and so the proposed rule change adds these programs to the list of specific areas of compliance that must be discussed in the Annual Reports.

⁹ Some Member Organizations already submit the Annual Reports to the Exchange and/or make them available to Exchange examiners.

¹⁰ P.L. 107-56, 115 Stat. 272 (2001).

The addition of anti-money laundering compliance programs to the aforementioned list continues the Exchange's practice of incrementally supplementing the list to reflect changes in the evolving regulatory environment. A similar augmentation recently occurred through NYSE Rule 342.23, which added Members' and Member Organizations' internal controls to the Annual Report's list of required compliance discussions.¹¹

(iii) Designation of CCO

The Exchange strongly believes that Member Organizations' compliance with federal laws and Exchange regulations should be of the utmost priority. In furtherance of that belief, the Exchange previously addressed the critically important role of the compliance function by requiring the Series 14 (NYSE Compliance Official) examination and registration, which are intended to ensure the qualifications of key compliance professionals.¹²

In further recognition of the increasing importance of the compliance function, the proposed rule change requires each Member Organization to formally designate a principal executive officer or general partner of the Member Organization as its CCO. This requirement is consistent with NYSE Rule 311(b)(5), which mandates that "principal executive officers" exercise responsibility over each of the prescribed business areas of a Member Organization (e.g., compliance). Currently, each principal executive

¹¹ See Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR-NYSE-2002-36).

¹² The Series 14 Examination is a qualification examination intended to ensure that the individuals designated as having day-to-day compliance responsibilities for their respective firms, or who supervise ten or more people engaged in compliance activities, have the knowledge necessary to carry out their job responsibilities. NYSE Rule 342.13(b) requires Members' and Member Organizations' compliance supervisors to pass the Series 14 Examination. See

officer and general partner is generally required to pass an examination acceptable to the Exchange that pertains to knowledge of his or her functional responsibility.¹³ Based on the type of business that individual conducts, and the structure of his or her organization, acceptable examinations include the Series 9/10 (General Securities Sales Supervisor), Series 14, Series 24 (General Securities Principal), Series 27 (Financial and Operations Principal), or Series 28 (Introducing Broker/Dealer Financial and Operations Principal).¹⁴

The CCO designation requirement does not apply to Members, because such members, whose activities are limited to interaction with other members on the Floor of the Exchange, generally lack the organizational infrastructure or scope of business activities that would necessitate designation of a CCO.¹⁵

(iv) CEO Certification

The proposed rule change's CEO certification requirement reflects the Exchange's belief that Member Organizations' senior executives, particularly CEOs, should focus the highest degree of attention and resources on the compliance function. While subordinates with supervisory responsibility for specific business lines remain accountable for the discharge of compliance policies and written supervisory procedures,

Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988).

¹³ See NYSE Interpretation Handbook, Rule 304A(a), (c)/01.

¹⁴ In interpretations 342.30(d)/01 and 342.30(e)/01, the Exchange also proposes guidance regarding: the designation of CCOs; the interaction between CCOs and other executives during preparation of Annual Reports; the scope and subjects of the Annual Reports; and the reporting and certification process. The text of interpretations 342.30(d)/01 and 342.30(e)/01 is available on the NYSE's Web site (www.NYSE.com), at the NYSE's principal office, and at the Commission's Public Reference Room.

¹⁵ This exemption is consistent with other provisions of NYSE Rule 342. For example, under certain circumstances, some compliance officials at Member Organizations are exempt from the Series 14 requirement. See NYSE Interpretation Handbook, Rule 342(a)(b)/02.

the Exchange considers CEOs ultimately to be accountable for the compliance and supervision of their Member Organizations.¹⁶ In keeping with those principles, the CEO certification requirement is intended to promote and expand dialogue between Member Organization CEOs and their officers who are responsible for compliance with federal laws and Exchange regulations.¹⁷

The required annual certification consists of four elements:

- (i) Each Member or each Member Organization’s CEO (or equivalent officer) must certify that processes are in place to: establish and maintain policies and procedures designed to achieve compliance with Exchange rules and applicable federal securities laws and regulations; modify such policies and procedures as business, regulatory and legislative changes dictate; and test the effectiveness of such policies and procedures on a periodic basis. This requirement goes to the essential nature of compliance, and assures an appropriately heightened attention to its details.
- (ii) Each Member Organization’s CEO (or equivalent officer) must certify that he or she has conducted one or more meetings with the CCO during the preceding 12 months, during which they discussed and reviewed the matters described in the certification. Such meetings, which must entail

¹⁶ Attestations similar to the yearly CEO certification requirement proposed herein are also required by Exchange Rule 351(f), which calls for annual confirmation of compliance with Exchange Rule 472 (“Communications with the Public”). See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (SR-NYSE-2002-09).

¹⁷ The proposed rule change’s CEO certification requirement corresponds in substance to NASD Rule 3013, which the SEC favorably described as seeking “to provide a mechanism to compel substantial and purposeful interaction between senior management and compliance personnel to enhance the quality of members’ supervisory and compliance systems.” Securities Exchange Act Release No.

discussion and review of the Member Organization's compliance efforts as of that date, should aid in the identification and resolution of significant ongoing and future compliance problems.

- (iii) Each Member Organization's CEO (or equivalent officer) must certify that his or her Member Organization's compliance processes are evidenced in a written report that was reviewed by the Member Organization's CEO, CCO, and such other officers as the Member Organization deems necessary, and submitted to the Member Organization's board of directors and audit committee, if any. The report must be produced prior to the execution of the proposed certification, must describe the manner in which the compliance processes are administered, and must identify the officers and supervisors who are responsible for its administration.¹⁸
- (iv) Each Member Organization's CEO (or equivalent officer) must certify that he or she has consulted with the CCO, such other officers of the Member Organization as the Member Organization deems necessary, and, to the extent the Member Organization's CEO (or equivalent officer), CCO and such other officers deem appropriate in order to attest to the statements in the certification, outside consultants, lawyers and accountants. This requirement recognizes that the CCO's expertise in the matters underlying the certification make his or her role in the process critical, and make the CCO an indispensable party to the CEO's certification.

The sentence "[I]f any of these areas do not apply to the member or member

50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR-NASD-2003-176).

¹⁸ See interpretation 342.30(e)/01.

organization, the report should so state,” which currently concludes Rule 342.30, has been repositioned in the amended rule text to avoid the ambiguity that otherwise would have resulted from the addition of Rules 342.30(d) and 342.30(e).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)¹⁹ of the Act in general and Section 6(b)(5) of the Act²⁰ which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest in that it facilitates the Exchange’s review of the Membership’s regulatory programs, strengthens Member Organizations’ oversight of their compliance processes and procedures, and promotes increased involvement of Member Organization CEOs in their firms’ compliance matters.

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

The NYSE 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 NYSE has not solicited but has received written comments on the proposed rule change.

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

¹⁹ 15 U.S.C. 78f(b)

²⁰ 15 U.S.C. 78f(b)(5)

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 self-regulatory organization consents, the Commission will:

- (A) by order approve the 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-64 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2004-64. 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 such 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-2004-64 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.²¹

Margaret H. McFarland
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12)