

Commission notes that FINRA members that do not fall within the de minimis exemption will be equitably allocated a portion of the fee based on an objective measure of their participation in the municipal securities market.⁹²

With respect to the comments that the proposed GASB Accounting Support Fee is inequitable because it is only imposed on broker-dealers, but not others who may benefit from GASB's activities, the Commission notes that Section 19(g) of the Securities Act provides that the Commission may require a registered national securities association to establish rules and procedures to provide for the equitable allocation, assessment, and collection of the GASB Accounting Support Fee from its members.⁹³ As such, consistent with the statutory language, FINRA may only impose the GASB Accounting Support Fee on its members, even though other entities may benefit from GASB's activities.

Further, in connection with the comments regarding whether FINRA members should be allowed to pass through the GASB Accounting Support Fee, the Commission notes that how FINRA members recoup their expenditures is not the subject of Section 19(g) of the Securities Act or FINRA's proposed rule change.⁹⁴ Consistent with Section 19(g)(1) of the Securities Act,⁹⁵ the GASB Accounting Support Fee will be allocated and assessed to, and collected from, FINRA members.⁹⁶

⁹² With respect to the concern that any attempt to pass through the fee would be based on estimates, and that setting up a system to track charges to customers would disproportionately burden small firms, the Commission notes that the proposed rule change does not require FINRA members to pass the fee through to their customers.

⁹³ See 15 U.S.C. 77s(g). Further, as discussed above, one commenter pointed out that, by allocating the GASB Accounting Support Fee among FINRA members, the proposed rule change could eliminate conflicts of interest for entities that collect sums from state and local governments for the funding of GASB, but that also participate in commenting on the policy decisions developed by GASB.

⁹⁴ With respect to the comment that the proposed rule change is inconsistent with how FASB is funded, the Commission notes that the allocation, assessment, and collection of the GASB Accounting Support Fee, unlike the FASB fee, is governed by Section 19(g) of the Securities Act.

⁹⁵ See 15 U.S.C. 77s(g)(1).

⁹⁶ The Commission notes that FINRA has proposed to publish a Regulatory Notice each year disclosing the total annual GASB Accounting Support Fee that it would collect for that year and an estimated fee rate, and that the Regulatory Notice would remind any firms choosing to pass through the fee of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, FINRA has stated that any disclosure used by the firm

With respect to the concerns that there would be no oversight of the amount of the GASB Accounting Support Fee to be collected and the use of the money, the Commission notes that Section 19(g)(5)(B)(i) of the Securities Act specifically states that Section 19 does not provide the Commission or any national securities association with direct or indirect oversight of the budget or technical agenda of the GASB.⁹⁷

With respect to comments regarding the \$50,000 fee for FINRA to administer the GASB Accounting Support Fee, the Commission notes that according to FINRA, the fee was negotiated with FAF and is based on estimated costs to FINRA. Further, FINRA stated that this fee may increase or decrease, if necessary, based on yearly reviews in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and the actual costs incurred by FINRA. As such, the Commission believes that the \$50,000 administrative fee is not unreasonable.⁹⁸

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹⁹ that the proposed rule change (SR-FINRA-2011-073) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁰

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-4767 Filed 2-28-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66453; File No. SR-NYSEAMEX-2012-11]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Registration Requirements for Traders

February 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

⁹⁷ See 15 U.S.C. 77s(g)(5)(B)(i).

⁹⁸ Based on FINRA's response to comments in the Notice and the response letter, the Commission believes that it is reasonable for FINRA to not amend its process for collecting its TAF to include the GASB Accounting Support Fee.

⁹⁹ 15 U.S.C. 78s(b)(2).

¹⁰⁰ 17 CFR 200.30-3(a)(12).

“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 9, 2012, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization (“SRO”). The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 registration requirements for traders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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 to amend its registration requirements for traders.⁵

Background

NYSE Amex Options Rule 341(a) currently provides that no member or member organization shall permit any natural person to perform regularly any

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange's affiliate, NYSE Arca, Inc., has submitted a substantially similar rule filing. See SR-NYSEAMEX-2012-11.

of the duties normally performed by a (i) Registered representative, (ii) securities lending representative, (iii) securities trader or (iv) direct supervisor of any such individual unless such person has been registered with, qualified by and approved by the Exchange. Commentary .01 to NYSE Amex Options Rule 341 defines "securities trader" as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated, as an employee or otherwise, and who does not transact any business with the public. A securities trader must pass the Series 7 examination and is registered as a General Securities Representative.⁶

Proposal

As part of the proposed rule change, the Exchange proposes to delete the word "regularly" from NYSE Amex Options Rule 341(a). The Exchange is making this threshold change to the registration requirement in the rule because it believes that registration is required whenever the activities set forth in the rule are performed, even if it would be on an irregular basis.

In addition, the Exchange proposes to create a new, alternative limited registration category for Proprietary Traders that would be reflected in NYSE Amex Options Rule 341(a) and Commentary .01 to that Rule. The Exchange has been working with other SROs, some of which have recently enhanced their registration requirements for associated persons,⁷ to develop the content outline and the qualification examination, the Series 56, which would be applicable to Proprietary Traders. Certain exchanges have submitted filings to the Commission to utilize the Series 56.⁸ The Exchange expects to describe the Series 56 in detail and submit the content outline for it to the Commission in a separate filing, as well as make the examination and alternative registration category available in Web CRD.⁹ Accordingly, the Exchange is amending its rules to recognize the Proprietary

Trader registration category and the Series 56.

Under the proposed rule change, the Exchange would rename the category "securities trader" as "Proprietary Trader." A Proprietary Trader would be required to be registered as such on Web CRD and pass the Series 56 examination described above, but would not be permitted to function in an agency capacity or otherwise conduct a public business in securities.¹⁰

The Exchange believes that the alternative limited registration category and qualification examination are appropriate because they are tailored to proprietary trading functions. Presently, persons engaged in proprietary trading on the Exchange are required to pass the Series 7, which the Exchange believes covers a great deal of material that is not relevant to proprietary trading functions. Instead, the Series 56 covers both equities and options trading rules, but not all of the rules that are applicable to firms and persons conducting a public business.

Securities traders currently associated with member organizations have previously passed the Series 7. The proposed rule change would not require those individuals currently acting as securities traders who have already passed the Series 7 to register under the new category as Proprietary Traders or to pass the Series 56 because the Exchange believes this would be redundant. Persons who have passed the Series 7 may, of course, engage in proprietary trading because the new Proprietary Trader registration category is a limited registration category. Thus, the proposal would not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then engaging in proprietary trading.

The Exchange expects that individuals might consider the category once it and the Series 56 examination become available for use by NYSE Amex on Web CRD. Accordingly, the Exchange believes that the category should be helpful to registering those individuals conducting a business in proprietary trading, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, member organizations that hire new associated persons might choose to register them in the category.

¹⁰ The Exchange proposes to add language to the definition of "Proprietary Trader" to specify that the definition does not include individuals required to be registered as Market Makers or Market Maker Authorized Traders. See *supra* note 6.

The proposed rule change is not intended to replace the Series 7 requirement for all traders, but simply to offer an alternative to that requirement on a going-forward basis for those qualified individuals who solely conduct a business in proprietary trading and have shown their proficiency by successfully passing the Series 56.

The Exchange also proposes technical and conforming changes to NYSE Amex Options Rules 6, 8, 340 (and Commentary .03 thereto), and 341B to substitute "Proprietary Trader" for "securities trader."

Finally, the Exchange notes that Proprietary Traders would be subject to the continuing education requirements of NYSE Amex Options Rule 341A.¹¹

Compliance Date

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the compliance date within 30 days from the operative date of the rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")¹² in general, and furthers the objectives of (1) Section 6(c)(3)(B) of the Act,¹³ pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,¹⁴ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 adopting new registration requirements for associated persons of member organizations who are acting in the capacity of a trader and by offering an alternative limited registration category for Proprietary Traders should help ensure that all associated persons engaged in a securities business are, and will

¹¹ Under Commentary .01 of that Rule, registered persons whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers are not subject to continuing education requirements. The Exchange intends to submit a separate filing in the future to apply continuing education requirements to such persons so that all registered persons would be subject to continuing education.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(c)(3)(B).

¹⁴ 15 U.S.C. 78f(b)(5).

⁶ Market Makers and Market Maker Authorized Trader [sic] are subject to separate registration requirements that are found in NYSE Rules 921NY and 921.1NY.

⁷ See Securities Exchange Act Release Nos. 63843 (Feb. 4, 2011), 76 FR 7884 (Feb. 11, 2011) (SR-ISE-2010-115); and 63314 (Nov. 12, 2010), 75 FR 70957 (Nov. 19, 2010) (SR-CBOE-2010-084).

⁸ See e.g., Securities Exchange Act Release No. 64699 (June 17, 2011) 76 FR 36945 (June 23, 2011) (SR-CBOE-2011-056).

⁹ Web CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

continue to be, properly registered, trained and qualified to perform their functions.

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

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.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will help ensure registration of all associated persons of member firms performing certain duties on the Exchange, even if certain activities performed on the Exchange are not done by such persons on a regular basis. In addition, waiver of the operative delay will enable associated persons of Exchange firms to avail themselves of the limited Proprietary Trader registration category, and qualify by taking the Series 56, as soon as it becomes available. Finally, the technical changes will add clarity to NYSE Amex's rules. For these reasons, the

Commission hereby waives the 30-day operative delay.¹⁷

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.

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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMEX-2012-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMEX-2012-11. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the NYSE's principal office and on its Internet Web site at www.nyse.com. 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-NYSEAMEX-2012-11 and should be submitted on or before March 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-4766 Filed 2-28-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66452; File No. SR-NYSEARCA-2012-15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Registration Requirements for Traders and Removing Obsolete References to Paper Registration Submissions

February 23, 2012.

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 February 9, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 registration requirements for traders and

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).