

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * <input type="text" value="37"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="12"/> Amendment No. (req. for Amendments *) <input type="text"/>
Proposed Rule Change by NYSE Amex LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>		
Rule		
<input type="checkbox"/> Pilot	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <input type="text" value="Proposal to amend the NYSE Amex equities definition of approved person to exclude foreign affiliates eliminate the application process for approved persons and make related technical and conforming changes"/>		
<b>Contact Information</b> Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * <input type="text" value="Clare"/> Last Name * <input type="text" value="Saperstein"/> Title * <input type="text" value="Vice President NYSE Regulation Inc"/> E-mail * <input type="text" value="csaperstein@nyx.com"/> Telephone * <input type="text" value="(212) 656-2355"/> Fax <input type="text" value="(212) 656-2223"/>		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date <input type="text" value="02/14/2012"/> By <input type="text" value="Janet McGinness"/> Corporate Secretary <input type="text"/> (Name *)      (Title *)  NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. <input type="button" value="NYX Janet McGinness,"/>		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE Amex, LLC (“NYSE Amex” or the “Exchange”) proposes to amend the NYSE Amex equities definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other NYSE Amex Equities rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Theodore R. Lazo  
General Counsel  
NYSE Regulation, Inc.  
(202) 661-8949

Clare F. Saperstein  
Vice President  
NYSE Regulation, Inc.  
(212) 656-2355

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend the NYSE Amex equities definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. Following approval of the proposed rule change, the Exchange will advise member organizations of the implementation date of the rule change via Information Memo.

## Background

The current rules governing the definition of and application process for an approved person are NYSE Amex Equities Rules 2 and 304. If the definition requirements under NYSE Amex Equities Rule 2 are met, then the person or entity has to apply to the Exchange for approval to register as an approved person. This requirement is intended to bring certain affiliates of Exchange member organizations within the Exchange's jurisdiction and to subject such affiliates' activities to Exchange rules to the extent their activities are related to the activities of the member organization.

NYSE Amex Equities Rule 2(c) defines the term "approved person" as "a person, other than a member, principal executive or employee of a member organization, who controls a member organization or is engaged in a securities or kindred business that is controlled by or under common control with a member or member organization who has been approved by the Exchange as an approved person." NYSE Amex Equities Rule 2(d) further defines "person" to include not only natural persons, but also corporations, limited liability companies, partnerships, associations and other organized groups of persons. NYSE Amex Equities Rule 2(e) defines the term "control" to mean the power to direct or cause the direction of management or policies, whether through ownership of securities, by contract or otherwise, and creates a rebuttable presumption of control if the person has a right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner, or principal executive of the member organization. NYSE Amex Equities Rule 2(f) defines "engage in a securities or kindred business" to mean transacting business as a broker or dealer in securities. Thus, the current definition of approved person includes a foreign affiliate of a member organization that is engaged in a broker-dealer business, but does not include, for example, a registered investment company. NYSE Amex Equities Rules 2A(e) and (f) further provide that the Exchange has jurisdiction after notice and a hearing to discipline approved persons in connection with the member organization's business and has jurisdiction over any and all other functions of approved persons in connection with the member organization's business in order for the Exchange to comply with its statutory obligation as a self-regulatory organization ("SRO").

NYSE Amex Equities Rules 304 and 311(a) require, with limited exceptions, that persons who meet the NYSE Amex Equities Rule 2(c) definition of an approved person must apply for approval by the Exchange as an approved person. NYSE Amex Equities Rule 304 further provides that no person may become or remain an approved person unless such person meets the standards prescribed in the Exchange's rules, and it prescribes the process that an applicant must follow to become an approved person. Among other things, this process involves submission to the Exchange of a completed Form AP-1 (in the case of a corporation or other legal entity) or Forms AD-G 2 and AD-G 3 (in the case of a natural person, collectively referred to as "AD-G"), and other pertinent

information regarding the candidate for approval. By executing the Form AP-1 or AD-G, as applicable, the approved person affirmatively consents to the Exchange's jurisdiction.

### Proposed Rule Change

The Exchange proposes to amend the definition of approved person in NYSE Amex Equities Rule 2 to revise the definition of which entities are deemed to be under "common control" with a member organization. The Exchange believes that the current definition, which includes certain foreign affiliates, is overbroad and it is unnecessary to assert jurisdiction over a foreign affiliate of a member organization that does not control a member organization. The Exchange notes that excluding such foreign affiliates from its jurisdiction would be consistent with Rule 19g2-1 under the Securities Exchange Act of 1934, as amended (the "Act"), which provides that an exchange is not required to enforce compliance with its rules against certain persons;<sup>1</sup> the Exchange has not identified a rule of any other SRO that asserts jurisdiction over a foreign affiliate under common control with a member of that SRO. As such, the Exchange proposes to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

By changing the definition of approved person to exclude certain foreign affiliates, the Exchange does not intend to eliminate certain controls in Exchange rules related to potential conflicts of interest associated with having a foreign affiliate under common control with a member organization. Accordingly, the Exchange proposes several amendments to its Rules. First, the Exchange

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<sup>1</sup> See 17 CFR 240.19g2-1. Under Rule 19g2-1, a national securities exchange is not required to enforce compliance, within the meaning of Section 19(g) of the Act, with the Act and the rules and regulations thereunder, to with respect to persons associated with a member, other than securities persons or persons who control a member. Under Rule 19g2-1(b)(1), a "securities person" is defined as a "person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *provided, however*, that a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association." A foreign broker-dealer not registered in the United States that is under common control with an NYSE Amex member organization falls outside of the definition of "securities person."

proposes to amend NYSE Amex Equities Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties. Second, the Exchange proposes to amend NYSE Amex Equities Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker ("DMM") unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit's member organization. Finally, the Exchange proposes to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.<sup>2</sup>

The Exchange also proposes to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person. If a person meets the definition of an approved person, as proposed, the Exchange will obtain jurisdiction by consent as described below. The Exchange believes that the current application process requires the submission of a substantial amount of information and documents related to member organization affiliates that is unnecessary to carry out the Exchange's regulatory responsibilities. In particular, because the Exchange is no longer the Designated Examining Authority ("DEA") for Exchange member organizations,<sup>3</sup> the Exchange does not believe that it needs to engage in a detailed financial review of approved persons of its member organization applicants. The Exchange further notes that other SROs do not require that such persons undergo such an application and approval

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<sup>2</sup> The Exchange does not believe any amendment to NYSE Amex Equities Rules 22, 91, 96, 112, 422, 410A, or 460 is necessary as a result of the proposed rule change; the Exchange believes such Rules would continue to be consistent with the requirements of the Exchange Act and the manner in which such they address potential conflicts of interest is appropriate under the circumstances.

<sup>3</sup> Prospective member organization applicants must be either a member of FINRA or, if the applicant does not transact business with public customers or conduct business on the Floor of the Exchange, a member of another registered securities exchange, before being approved as an Exchange member organization. *See* NYSE Amex Equities Rule 2(b)(i). Generally, FINRA or the other exchange already is, or will be, designated as the DEA under SEC Rule 17d-1 and the Exchange will not be designated as such. Currently, the Exchange is not the DEA for any of its member organizations, but if it were designated as the DEA, the Exchange has retained FINRA to perform services related to meeting the Exchange's DEA responsibilities for a member organization.

process.<sup>4</sup> The Exchange, therefore, proposes to remove all references to an approval process and the submission of an application for such approval from NYSE Amex Equities Rules 304, 308, and 311. The Exchange also would eliminate use of the Forms AP-1 and AD-G.

Nevertheless, the Exchange's jurisdiction over approved persons in accordance with the revised definition would remain. Thus, the Exchange proposes to amend NYSE Amex Equities Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. Specifically, an approved person would continue to have to agree to (i) inform the Exchange of any statutory disqualification of the approved person under Section 3(a)(39) of the Act, (ii) abide by the Rules of the Exchange relating to approved persons, and (iii) permit examination by the Exchange, or any person designated by it, of its books and records to verify the accuracy of the information required to be supplied under Exchange Rules.<sup>5</sup>

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.<sup>6</sup>

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<sup>4</sup> For example, the rules of FINRA and The NASDAQ Stock Market, Inc. do not impose application and approval requirements on member affiliates. *See also* note 6, *infra*.

<sup>5</sup> The Exchange proposes to eliminate the text in current Rule 304(e)(1), which requires an approved person to supply information concerning its relationship with the member organization. This provision relates to information required to be submitted on Form AP-1 or AD-G, and as such it is not necessary to retain it in proposed Rule 304.

<sup>6</sup> The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. *See* FINRA Regulatory Notice 10-01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary

The Exchange also proposes to make technical and conforming changes to other rules that reference the approved person application process. The Exchange further proposes to make technical amendments to correct an error in the spelling of “principal executive,” which is spelled “principle executive” in NYSE Amex Rule 476A and NYSE Amex Equities Rules 308, 410A, 422, and 460. In addition, because the Exchange does not have an approval process or qualification examination requirements for principal executives, the Exchange proposes to delete references to “principle executive” from NYSE Amex Equities Rules 304 and 304A. The Exchange notes that these proposed changes are consistent with similar amendments to NYSE Rules 304 and 304A.<sup>7</sup>

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it 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 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. More specifically, the Exchange believes that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards. As such, the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

4. 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.

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complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

<sup>7</sup> See SR-NYSE-2012-06.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On July 29, 2011, the Exchange submitted a proposed rule change to amend the definition of approved person to exclude foreign affiliates, create a new definition of “foreign securities affiliate,” eliminate the application process for approved persons, and make related technical and conforming changes (the “previous proposed rule change”).<sup>10</sup> The Exchange did not solicit written comments on the previous proposed rule change, but its affiliate, NYSE, which proposed substantially the same rule change,<sup>11</sup> received one written comment letter addressed to the Commission.<sup>12</sup> The letter argued that it was not necessary or desirable for the Exchange to create the new category of “foreign securities affiliate.”<sup>13</sup> The Exchange agreed with the commenter and, therefore, withdrew the previous proposed rule filing. In the current proposed rule filing, the Exchange proposes to amend the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes, but does not propose to add the category of “foreign securities affiliate” to its rules at this time.

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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<sup>10</sup> See Securities Exchange Act Release No. 64987 (July 29, 2011), 76 FR 46863 (August 3, 2011) (SR-NYSEAmex-2011-54).

<sup>11</sup> See Securities Exchange Act Release No. 64988 (July 29, 2011), 76 FR 46860 (August 3, 2011) (SR-NYSE-2011-36).

<sup>12</sup> See letter from John W. Curtis, Managing Director, General Counsel Global Compliance, Goldman, Sachs & Co., to Elizabeth M. Murphy, Secretary, Commission, dated August 31, 2011 (“Goldman Sachs Letter”).

<sup>13</sup> See Goldman Sachs Letter at 1.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEAMEX-2012-12)

[Date]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Amex Equities Definition of Approved Person to Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

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 February 14, 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, 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 the NYSE Amex equities definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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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 to amend the NYSE Amex equities definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. Following approval of the proposed rule change, the Exchange will advise member organizations of the implementation date of the rule change via Information Memo.

Background

The current rules governing the definition of and application process for an approved person are NYSE Amex Equities Rules 2 and 304. If the definition requirements under NYSE Amex Equities Rule 2 are met, then the person or entity has to apply to the Exchange for approval to register as an approved person. This requirement is intended to bring certain affiliates of Exchange member organizations within the Exchange's jurisdiction and to subject such affiliates' activities to Exchange rules to the extent their activities are related to the activities of the member organization.

NYSE Amex Equities Rule 2(c) defines the term "approved person" as "a person,

other than a member, principal executive or employee of a member organization, who controls a member organization or is engaged in a securities or kindred business that is controlled by or under common control with a member or member organization who has been approved by the Exchange as an approved person.” NYSE Amex Equities Rule 2(d) further defines “person” to include not only natural persons, but also corporations, limited liability companies, partnerships, associations and other organized groups of persons. NYSE Amex Equities Rule 2(e) defines the term “control” to mean the power to direct or cause the direction of management or policies, whether through ownership of securities, by contract or otherwise, and creates a rebuttable presumption of control if the person has a right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner, or principal executive of the member organization. NYSE Amex Equities Rule 2(f) defines “engage in a securities or kindred business” to mean transacting business as a broker or dealer in securities. Thus, the current definition of approved person includes a foreign affiliate of a member organization that is engaged in a broker-dealer business, but does not include, for example, a registered investment company. NYSE Amex Equities Rules 2A(e) and (f) further provide that the Exchange has jurisdiction after notice and a hearing to discipline approved persons in connection with the member organization’s business and has jurisdiction over any and all other functions of approved persons in connection with the member organization’s business in order for the Exchange to comply with its statutory obligation as a self-regulatory organization (“SRO”).

NYSE Amex Equities Rules 304 and 311(a) require, with limited exceptions, that persons who meet the NYSE Amex Equities Rule 2(c) definition of an approved person

must apply for approval by the Exchange as an approved person. NYSE Amex Equities Rule 304 further provides that no person may become or remain an approved person unless such person meets the standards prescribed in the Exchange's rules, and it prescribes the process that an applicant must follow to become an approved person. Among other things, this process involves submission to the Exchange of a completed Form AP-1 (in the case of a corporation or other legal entity) or Forms AD-G 2 and AD-G 3 (in the case of a natural person, collectively referred to as "AD-G"), and other pertinent information regarding the candidate for approval. By executing the Form AP-1 or AD-G, as applicable, the approved person affirmatively consents to the Exchange's jurisdiction.

#### Proposed Rule Change

The Exchange proposes to amend the definition of approved person in NYSE Amex Equities Rule 2 to revise the definition of which entities are deemed to be under "common control" with a member organization. The Exchange believes that the current definition, which includes certain foreign affiliates, is overbroad and it is unnecessary to assert jurisdiction over a foreign affiliate of a member organization that does not control a member organization. The Exchange notes that excluding such foreign affiliates from its jurisdiction would be consistent with Rule 19g2-1 under the Securities Exchange Act of 1934, as amended (the "Act"), which provides that an exchange is not required to enforce compliance with its rules against certain persons;<sup>4</sup> the Exchange has not identified a rule

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<sup>4</sup> See 17 CFR 240.19g2-1. Under Rule 19g2-1, a national securities exchange is not required to enforce compliance, within the meaning of Section 19(g) of the Act, with the Act and the rules and regulations thereunder, to with respect to persons associated with a member, other than securities persons or persons who control a member. Under Rule 19g2-1(b)(1), a "securities person" is defined as a "person

of any other SRO that asserts jurisdiction over a foreign affiliate under common control with a member of that SRO. As such, the Exchange proposes to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

By changing the definition of approved person to exclude certain foreign affiliates, the Exchange does not intend to eliminate certain controls in Exchange rules related to potential conflicts of interest associated with having a foreign affiliate under common control with a member organization. Accordingly, the Exchange proposes several amendments to its Rules. First, the Exchange proposes to amend NYSE Amex Equities Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties. Second, the Exchange proposes to amend NYSE Amex Equities Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an

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who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *provided, however*, that a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association.” A foreign broker-dealer not registered in the United States that is under common control with an NYSE Amex member organization falls outside of the definition of “securities person.”

approved person of a Designated Market Maker (“DMM”) unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit’s member organization. Finally, the Exchange proposes to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.<sup>5</sup>

The Exchange also proposes to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person. If a person meets the definition of an approved person, as proposed, the Exchange will obtain jurisdiction by consent as described below. The Exchange believes that the current application process requires the submission of a substantial amount of information and documents related to member organization affiliates that is unnecessary to carry out the Exchange’s regulatory responsibilities. In particular, because the Exchange is no longer the Designated Examining Authority (“DEA”) for Exchange member organizations,<sup>6</sup> the

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<sup>5</sup> The Exchange does not believe any amendment to NYSE Amex Equities Rules 22, 91, 96, 112, 422, 410A, or 460 is necessary as a result of the proposed rule change; the Exchange believes such Rules would continue to be consistent with the requirements of the Exchange Act and the manner in which such they address potential conflicts of interest is appropriate under the circumstances.

<sup>6</sup> Prospective member organization applicants must be either a member of FINRA or, if the applicant does not transact business with public customers or conduct business on the Floor of the Exchange, a member of another registered securities exchange, before being approved as an Exchange member organization. *See* NYSE Amex Equities Rule 2(b)(i). Generally, FINRA or the other exchange already is, or will be, designated as the DEA under SEC Rule 17d-1 and the Exchange will not be designated as such. Currently, the Exchange is not the DEA for any of its member organizations, but if it were designated as the DEA, the Exchange has retained FINRA to perform services related to meeting the Exchange’s DEA responsibilities for a member organization.

Exchange does not believe that it needs to engage in a detailed financial review of approved persons of its member organization applicants. The Exchange further notes that other SROs do not require that such persons undergo such an application and approval process.<sup>7</sup> The Exchange, therefore, proposes to remove all references to an approval process and the submission of an application for such approval from NYSE Amex Equities Rules 304, 308, and 311. The Exchange also would eliminate use of the Forms AP-1 and AD-G.

Nevertheless, the Exchange's jurisdiction over approved persons in accordance with the revised definition would remain. Thus, the Exchange proposes to amend NYSE Amex Equities Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. Specifically, an approved person would continue to have to agree to (i) inform the Exchange of any statutory disqualification of the approved person under Section 3(a)(39) of the Act, (ii) abide by the Rules of the Exchange relating to approved persons, and (iii) permit examination by the Exchange, or any person designated by it, of its books and records to verify the accuracy of the information required to be supplied under Exchange Rules.<sup>8</sup>

The focus on identification of approved persons by each member organization and

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<sup>7</sup> For example, the rules of FINRA and The NASDAQ Stock Market, Inc. do not impose application and approval requirements on member affiliates. *See also* note 9, *infra*.

<sup>8</sup> The Exchange proposes to eliminate the text in current Rule 304(e)(1), which requires an approved person to supply information concerning its relationship with the member organization. This provision relates to information required to be submitted on Form AP-1 or AD-G, and as such it is not necessary to retain it in proposed Rule 304.

consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.<sup>9</sup>

The Exchange also proposes to make technical and conforming changes to other rules that reference the approved person application process. The Exchange further proposes to make technical amendments to correct an error in the spelling of “principal executive,” which is spelled “principle executive” in NYSE Amex Rule 476A and NYSE Amex Equities Rules 308, 410A, 422, and 460. In addition, because the Exchange does not have an approval process or qualification examination requirements for principal executives, the Exchange proposes to delete references to “principle executive” from NYSE Amex Equities Rules 304 and 304A. The Exchange notes that these proposed

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<sup>9</sup> The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. *See* FINRA Regulatory Notice 10-01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

changes are consistent with similar amendments to NYSE Rules 304 and 304A.<sup>10</sup>

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.<sup>11</sup>

The Exchange also proposes to make technical and conforming changes to other rules that reference the approved person application process. The Exchange further proposes to make technical amendments to correct an error in the spelling of “principal executive,” which is spelled “principle executive” in NYSE Amex Rule 476A and NYSE Amex Equities Rules 308, 410A, 422, and 460. In addition, the Exchange proposes to delete “principle executive” from NYSE Amex Equities Rules 304 and 304A for

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<sup>10</sup> See SR-NYSE-2012-06.

<sup>11</sup> The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. See FINRA Regulatory Notice 10-01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

consistency with similar amendments to NYSE Rules 304 and 304A.<sup>12</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>14</sup> in particular in that it 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 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. More specifically, the Exchange believes that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards. As such, the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

### 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.

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<sup>12</sup> See SR-NYSE-2011-02.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the Federal Register or 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 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-NYSEAMEX-2012-12 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-2012-12. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://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-2012-12 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

Additions underlined; deletions [bracketed].

**Rules of NYSE Amex LLC**

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**Section 9A. Disciplinary Rules**

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**Rule 476A. Imposition of Fines for Minor Violation(s) of Rules**

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in Disciplinary Rule 476, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed \$5,000, on any member, member organization, [principle] principal executive, approved person, or registered or non-registered employee of a member or member organization, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

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- Reporting rule violations (Rules 104A.50 - NYSE Amex Equities, 304[(h)(2)] - NYSE Amex Equities, 312(a) - NYSE Amex Equities, 312(b) - NYSE Amex Equities, 312(c) - NYSE Amex Equities, 313 - NYSE Amex Equities, 345.12 - NYSE Amex Equities, 345.17 - NYSE Amex Equities, 346(c) - NYSE Amex Equities, 351 - NYSE Amex Equities, 421 - NYSE Amex Equities, 440F- NYSE Amex Equities, 440G- NYSE Amex Equities, 440H- NYSE Amex Equities, 4110.01 - NYSE Amex Equities, 4521 - NYSE Amex Equities, 4530 - NYSE Amex Equities, and 4560(a) - NYSE Amex Equities)

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**NYSE Amex Equities Rules**

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**Rule 2 - NYSE Amex Equities. "Member," "Membership," "Member Firm," etc.**

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(c) The term “approved person” means a person, other than a member, principal executive or employee of a member organization, who controls a member organization, [or] is engaged in a securities or kindred business that is controlled by[, or under common control with] a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization [who has been approved by the Exchange as an approved person].

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### **Rule 22 - NYSE Amex Equities. Disqualification Because of Personal Interest**

(a) No member of the NYSE Euronext (‘NYSE Euronext’), the Exchange, American Stock Exchange Holdings, LLC (“Amex Holdings”) and NYSE Regulation boards of directors or of any committee authorized by the NYSE Euronext, the Exchange, Amex Holdings, and NYSE Regulation boards of directors shall participate (except to the extent of testifying at the request of such boards or of such committee) in the investigation or consideration of any matter relating to any member, principal executive, approved person, [or] member organization, or affiliate of such member organization with knowledge that such member, principal executive, approved person, [or] member organization or affiliate is indebted to such director or committee member, or to their member organization or any participant therein, or that they, their member organization or any participant therein is indebted to such member, principal executive, approved person, [or] member organization, or affiliate, excluding, however, any indebtedness arising in the ordinary course of business out of transactions on any exchange, out of transactions in the over-the-counter markets, or out of the lending and borrowing of securities.

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### **Rule 91 - NYSE Amex Equities. Taking or Supplying Securities Named in Order**

No member, whether acting as a DMM or otherwise, who has accepted for execution, personally or through his or her member organization, an order for the purchase of securities shall fill such order by selling such securities for any account in which he, his member organization, or any [other] member, [or] principal executive [therein has a direct or indirect interest or for any account in which an] approved person [in such organization] or officer [thereof] of such member organization is directly or indirectly interested when the member knows or should have known that the sale is for such an account or having so accepted an order for the sale of securities shall fill such order by buying such securities for such an account, except as follows:

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### **Rule 96 - NYSE Amex Equities. Limitation on Members’ Trading Because of Options**

No member while on the Floor shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member organization, or any [other] member, principal executive, or approved person [in] of such member organization is directly or indirectly interested, of any stock in which he holds or has granted any put, call, straddle or other option, or in which he has knowledge that his member organization or any of the above mentioned accounts holds or has granted any put, call, straddle or other option, except that the provisions of this rule shall not apply in the case of any such options that are listed or traded on a national securities exchange. The Exchange may at any time, and from time to time, require reports relating to transactions in options effected by a member or member organization.

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**Rule 98A - NYSE Amex Equities. Restrictions on Persons or Parties Affiliated with A DMM Unit**

[No issuer, or partner or subsidiary thereof, may become an approved person of a DMM unit that is registered in a stock of that issuer.] A DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM unit's member organization.

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**Rule 112 - NYSE Amex Equities. Orders Initiated 'Off the Floor.'**

(a) All orders in stocks for the account of a member organization or any member, principal executive, [or] approved person, officer, or employee of [in] such organization [or officer or employee thereof] or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor.

The restrictions of paragraph (a) above shall not apply to an order:

(i) – (v) No change

(b) – (c) No change

(d) Any order entered by a member organization for any account in which it, or any member, principal executive, [or] approved person, officer, or employee of [in] such organization [or officer or employee thereof] is directly or indirectly interested, or for any discretionary account serviced by the member organization, following a conversation with a member or employee in that organization who is on the Floor, shall be deemed to be an off-Floor order, provided (i) that such order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order is maintained; or (ii) an exception from the order room transmission requirement is available under paragraph (a) of this Rule.

(e) No member or member organization shall execute, or cause to have executed, on the Exchange, any order for any account in which such member, member organization, or any member, principal executive, [or] approved person, officer, or employee of [in] such organization [or officer or employee thereof] is directly or indirectly interested, or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against the front-running of block transactions that the Exchange may from time to time adopt and make known to its members.

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**Rule 304 - NYSE Amex Equities, [Principle executives and] Approved Persons**

[(a) No person shall become or remain a principle executive or approved person unless such person meets and continues to meet the standards prescribed in the Rules of the Exchange.

(b) Any natural person, not a member of the Exchange, shall become a principle executive of the Exchange by agreeing to abide by all rules adopted from time to time by the Exchange and by being either

(i) a general partner in a member organization or an employee who controls such member organization; or

(ii) an employee of a member organization who is:

(a) a person who controls such organization, or

(b) a principal executive officer of such organization.

Such agreement to abide by the Rules shall be made by written instrument filed with the Exchange in which the signer agrees as aforesaid. Any person registered with the Exchange in any capacity shall become a principle executive upon written notice to the Exchange that such person is included in either (i) or (ii), above.

(c) Reserved.

(d) Reserved.

(e) Any person who controls a member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member organization but is not a member or principle executive or an employee of a member organization shall apply for approval by the Exchange as an approved person by furnishing the Exchange with such information with respect to such applicant, its history and business, its equity-holders, officers, partners and directors, any person controlling such applicant, and such other information as the rules of the Exchange may require.

Each such applicant] A member organization must identify each approved person to the Exchange. Each approved person shall consent to the jurisdiction of the Exchange and shall agree to:

(1) [Supply the Exchange with information with respect to such applicant's relationship and dealings with the member or member organization with which it is associated as the Exchange may reasonably require to ascertain whether the applicant is in compliance with applicable provisions of Federal Securities Laws, the rules and regulations thereunder, and the rules of the Exchange; and

(2) to] supply the Exchange with information relating to the existence of any statutory disqualification to which the [applicant] approved person or any person associated with the [applicant] approved person may be subject, as defined in the Securities Exchange Act of 1934; [and]

[(3)] (2) [to] abide by such provisions of the Rules of the Exchange relating to approved persons as shall from time to time be in effect; and

[(4)] (3) [to] permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the Rules of the Exchange.

••• **Supplementary Material:**

.10 Notwithstanding the provisions of Rule 304[(e)(4)] - NYSE Amex Equities, no [applicant to become an approved person (the "applicant") or] approved person which is domiciled outside the United States shall be required to permit examination by the Exchange, or any person designated by it, of the [applicant's or] approved person's books and records, at its place of domicile, to verify the accuracy of information required to be supplied by the rules of the Exchange whenever such examination would, in the opinion of the independent person or government official (as hereinafter specified,) be contrary to the law to which the [applicant or] approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever an [applicant or an] approved person chooses to invoke the provisions of the preceding sentence of this paragraph, the [applicant or] approved person shall, at its expense, submit to the Exchange a written certification acceptable to the Exchange by a person deemed independent of the [applicant or] approved person and of its affiliated member organization, which person is recognized as an enrolled attorney or counselor at law in such place of domicile (the "independent person") or an appropriate governmental official of the place of domicile stating that the examination of the books and records of the [applicant or] approved person by the Exchange or any person designated by it at its place of domicile would be contrary to the law to which the [applicant or] approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever and so long as an approved person chooses to invoke the provisions of the first sentence of this paragraph, the approved person shall, at its expense, submit to the Exchange, not less frequently than annually and upon specific

request by the Exchange, a written certification acceptable to the Exchange by an independent person or a person deemed independent of the [applicant or] approved person and its affiliated member organization which person is recognized in the place of domicile of the [applicant or] approved person as an auditor stating that upon reasonable examination conducted by the said person in accordance with generally accepted practices and principles prevalent in the approved person's place of domicile, (i) in respect of any appropriately designated omnibus account carried by the affiliated member organization for the account of the approved person but not for its benefit, said independent person has no reason to believe that any of the persons on whose behalf and for whose benefit any transaction was effected therein was a person associated with the approved person or its affiliated member organization within the meaning of the Securities Exchange Act of 1934 as amended (the "Act"), or the rules thereunder, and (ii) in respect of any account carried by the affiliated member organization in the name and for the account and benefit of the approved person, which account reflects transactions effected in reliance on Section 11(a)(1)(G) of the Act, the rules thereunder and, in particular, Rule 11a1-2 thereunder, the approved person, during its preceding fiscal year, derived more than fifty percent of its gross revenues from one or more of the sources specified in Section 11(a)(1)(G)(i) of the Act.

#### **Rule 304A - NYSE Amex Equities Member [and Principle Executive] Examination Requirements**

(a) Every applicant for membership[, or principle executive,] shall pass an examination required by the Exchange unless such examination is waived by the Exchange.

(b) Every applicant for membership [or principle executive] shall agree with the Exchange that, unless the appropriate qualifying examination required by the Exchange is waived, the applicant will, within three months following six months after becoming a member [or principle executive] without having passed such examination, or upon failure to pass such examination after-not more than three attempts, whichever occurs first, cease to be a member[ or principle executive], retire as a general partner, principal executive officer, or director and if necessary promptly dispose of sufficient voting stock as may be necessary to reduce ownership below that level which enables such applicant to exercise controlling influence over the management or policies of the member organization.

(c) No member [or principle executive] shall undertake any active duties as a member [or principle executive] until the appropriate examination requirement is satisfied. A member who is to be active on the floor is required to be indoctrinated under the guidance of an experienced floor member for such period of time as may be necessary to become acquainted with floor procedures before being permitted to executed orders without supervision.

#### **••• Supplementary Material:**

.10 The procedures for applying for these examinations are contained in study outlines which are available from the Exchange.

.20 Without the consent of the Exchange, no member qualified as a floor member shall act as an office member nor shall a member qualified as an office member act as a floor member without passing the appropriate qualifying examination required by the Exchange.

.30 Reserved. [A floor member required to retire, under paragraph (b) of this rule, who at the time of submitting the application was qualified as a principle executive, may if the member and the member organization so desire, retain membership and act as an office member or dispose of the membership and continue as a principle executive in the member organization.]

.40 An office member required to retire, under paragraph (b) of this rule, who at the time of submitting the application was qualified as a floor member, may, if the member and the member organization so desire, retain membership and act as a floor member in the member organization.

.50 Any member [or principle executive] whose sole duties are on the floor of another exchange will not be required to pass a New York Stock Exchange examination, if a floor examination, satisfactory to this Exchange, given by the exchange on whose floor the applicant is active, is passed.

.60 A member who applies to register as an odd-lot dealer or broker, DMM or registered trader is also required to pass an appropriate examination in these areas as prescribed by the Exchange. (See Rule 101.10 - NYSE Amex Equities, 103.10 - NYSE Amex Equities, and 111 - NYSE Amex Equities.)

.70 Any member [or principle executive] intending to work in the office of a member organization, who lacks experience in the securities business and who proposes to service customers accounts may also be required to undergo a period of training and to pass the examination for registered representatives.

.80 Any member [or principle executive] who is engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts must demonstrate competency by satisfying a solicitors examination requirement of a national commodities exchange, which examination is acceptable to the Exchange.

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### **Rule 308 - NYSE Amex Equities. Acceptability Proceedings**

(a) The Exchange may disapprove (i) the application of a prospective member or member organization; or (ii) the application for employment or association with a member or member organization, of any prospective member, [principle] principal executive, [approved person,] registered representative, or other person required by the Rules of the Exchange to be approved by the Exchange; or (iii) any change in the status of any person

which change requires approval of the Exchange; or (iv) the application of any non-member broker/dealer accessee, as provided for in the Exchange Rules, or in the Securities Exchange Act of 1934, as amended.

(b) No change.

(c) All proceedings under this rule shall be conducted in accordance with the provisions of this rule and shall be held before an Acceptability Committee consisting of at least three persons being members of the Acceptability Board to be selected by the Chief Hearing Officer (as designated under Rule 476(b)) in accordance with paragraph (d) of this rule.

The Chairman of the Board of the Exchange, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board of Directors, shall from time to time appoint an Acceptability Board to be composed of such number of members and [principle] principal executives of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary. The members of the Acceptability Board shall be appointed annually and shall serve at the pleasure of the Board of Directors.

(d) In any proceeding under this rule involving, as an applicant therein, a prospective member, member organization, [principle] principal executive, [approved person,] or non-member broker/dealer accessee, the members of the Acceptability Board serving on the Acceptability Committee shall be members or [principle] principal executives who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities. In any such proceeding relating to proposed activities on the Floor of the Exchange, all persons serving on the Acceptability Committee shall be members active on the Floor of the Exchange. In any such proceeding relating to any other proposed activities, all persons serving on the Acceptability Committee shall work in the offices of a member or member organization which engages in a business involving substantial direct contact with securities customers.

In any proceeding under this rule involving as an applicant therein a prospective registered or non-registered employee of a member or member organization who will not be a member or [principle] principal executive, the members of the Acceptability Board serving on the Acceptability Committee shall be registered employees or non-registered employees of members and member organizations who are not members or [principle] principal executives and who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities. In any such proceeding relating to such employees' proposed activities on the Floor of the Exchange, all persons serving on the Acceptability Committee shall be registered or non-registered employees of a member or member organization active on the Floor of the Exchange and who are not members or [principle] principal executives. In any such proceeding relating to any other proposed activities, all persons serving on the

Acceptability Committee shall work in the offices of a member or member organization which engages in a business involving substantial direct contact with securities customers.

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**Rule 311 - NYSE Amex Equities. Formation and Approval of Member Organizations**

(a) Any person who proposes to form a member organization [and any member organization which proposes to admit therein any approved person] shall notify the Exchange in writing before any such formation [or admission], pay any applicable fee and shall submit such information as may be required by the Rules of the Exchange. No such member organization shall become or remain a member organization unless all approved persons [required to be approved are so approved and] execute [such] agreements with the Exchange as required by [the] Rule[s] 304 - NYSE Amex Equities [of the Exchange may prescribe].

(b) The Board of Directors shall not approve a partnership or corporation as a member organization unless:

(1) each director of such corporation is a member, principal executive or an approved person; and

(2) every person who controls such corporation is a member, principal executive or approved person; and

(3) every natural person who is a general partner in such partnership is a member or principal executive and every other person who controls such partnership is a member, principal executive or approved person; and

(4) [every person who engages in a securities or kindred business and is controlled by or under common control with such partnership or corporation is an approved person] every approved person of the member organization meets the requirements of Rule 304 - NYSE Amex Equities; and

(5) The Board of Directors of such corporation designates “principal executives”; and

(6) such partnership or corporation complies with such additional requirements as the rules of the Exchange may prescribe.

(7) every employee who is associated as a member with such member organization is designated with a title, such as vice president, consistent with his responsibilities and the usage of titles within such organization.

(c) – (g) No change.

.....**Supplementary Material:**

.10 Reserved.

.11 **Application.**—The papers required to be submitted prior to approval of the formation or admission of a member organization are as follows:

(1) Letter giving name and address of proposed or existing organization, date of proposed formation or admission, and names of all proposed or present officers and other parties required to be approved by the Exchange under Rule[s 304 - NYSE Amex Equities and] 311 - NYSE Amex Equities; and

(2) individually executed applications by all parties whose approval by the Exchange is required.

The papers required to be submitted prior to approval of the admission to an existing member organization of any party requiring the approval of the Exchange under Rule[s 304 - NYSE Amex Equities and] 311 - NYSE Amex Equities, are as follows:

(1) Letter stating name of such proposed party and proposed date of admission to member organization; and

(2) an individually executed application by such proposed party.

.12 **Authorization and Statement of Understanding.**—Authorization and Statement of Understanding—Each member organization, or proposed member organization, must submit the following authorization and statement of understanding executed by each natural person [requiring the approval of the Exchange under Rule 304 - NYSE Amex Equities] who is an approved person under Rule 2(c) - NYSE Amex Equities:

“In connection with my current application, I authorize the Exchange and any agent acting on its behalf, to conduct an investigation of my character, credit worthiness, ability, business activities, educational background, previous employment and reasons for termination thereof.

“I authorize and request any and all of my former employers, and any other person to furnish to the Exchange, and any agent acting on its behalf, any information that they may have concerning my character, credit worthiness, ability, business activities, educational background, general reputation, previous employment and reasons for termination thereof . . . Moreover, I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the Exchange and any agent acting on its behalf.

“Further, I recognize that I will be the subject of an investigative report ordered by the Exchange and acknowledge that I have been informed of my right to

request information from the Exchange concerning the nature and scope of the investigation requested.”

**.13 Agreement with the Exchange.**—Each member corporation and each member [and approved person] of the corporation must agree with the Exchange that if any person required to be approved by the Exchange as a member [or approved person] fails or ceases to be so approved, the corporation may be deprived by the Exchange of all the privileges of a member corporation unless the corporation redeems or converts the stock held by such person as required under Rule 312 - NYSE Amex Equities.

.14 - .17 No change.

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## **Rule 402 - NYSE Amex Equities. Customer Protection—Reserves and Custody of Securities**

### General Provisions

(a) Each member organization shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3-3 promulgated under the Securities Exchange Act of 1934. For the purpose of this Rule the definitions contained in such Rule 15c3-3 shall apply.

### Agreements for Use of Customers' Securities

(b) No member organization shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such member organization shall first have obtained a written authorization from such customer permitting the loan of such securities by the member organization.

### ••• Supplementary Material:

**.30 Securities Callable in Part.**—Member organizations which have in their possession or under their control bonds or preferred stocks of issues which are callable in part, whether specifically set aside or otherwise, shall identify each such bond or preferred stock so that their records shall clearly show for whose account it is held, except in the case of:

(a) bonds, interest upon which has not been paid for at least two interest periods;

(b) Euro-Dollar bonds deposited in a central clearing facility for Euro-Dollar bonds, provided:

(1) customers are notified before deposit that their bonds may be deposited in the facility, and

(2) the member organization on behalf of its customers has the right to withdraw uncalled bonds from the facility at any time.

(c) bonds or preferred stocks, provided:

(1) the member organization has adopted an impartial lottery system in which the probability of a customer's bonds or preferred stocks being selected as called is proportional to the holdings of all customers of such securities held in bulk by or for the member organization;

(2) the member organization will withdraw such securities from any depository for the central handling of securities prior to the first date on which such securities may be called unless said depository has adopted an impartial lottery system which is applicable to all participants whereby the called amount of the securities deposited with the depository is allocated among said participants;

(3) the systems and the manner in which such securities are held as referred to in (c)(1) and (c)(2) and the right of customers under subparagraph (C)(4) are disclosed to all customers prior to the member organization's depositing in bulk or prior to the customer purchasing such securities, such disclosure to be made in writing prior to deposit or purchase except in the case of a new account, provided notice as herein described is sent to the customer prior to settlement date; and

(4) customers have the right to withdraw uncalled fully paid securities from the firm at any time prior to a partial call, and also to withdraw excess margin securities provided that the customers' accounts are not subject to restriction under Regulation T or such withdrawals will not cause a Rule 431 - NYSE Amex Equities undermargined condition.

In the event there is any call of such securities referred to in (b) and (c) above which is favorable to the called parties, the member organization shall not allocate any such called securities to any account in which it or its general, limited, or special partners, officers, directors, approved persons, affiliates or employees have an interest until all other customers' positions in such securities have been satisfied.

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#### **Rule 410A - NYSE Amex Equities. Automated Submission of Trading Data**

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, [principle] principal executive, approved person, partner, officer, director, or employee [thereof] of such member organization, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

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**Rule 422 - NYSE Amex Equities. Loans of and to Directors, etc.**

Without the prior consent of the Exchange Board of Directors no member of the boards of directors or of any committee of, NYSE Euronext, Exchange, NYSE Market, New York Stock Exchange, LLC and NYSE Regulation and no officer or employee of NYSE Euronext, Exchange, NYSE Market, New York Stock Exchange, LLC and NYSE Regulation shall directly or indirectly make any loan of money or securities to or obtain any such loan from any member organization member, [principle] principal executive, approved person, employee or any employee pension, retirement or similar plan of any member organization unless such loan be (a) fully secured by readily marketable collateral, or (b) made by a director or committee member to or obtained by a director or committee member from the member organization of which he is a member, [principle] principal executive or employee or from a member, [principle] principal executive or employee therein.

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**Rule 460 - NYSE Amex Equities. DMMs Participating in Contests**

(a) No DMM member or his or her DMM unit or any other member, [principle] principal executive, or officer or employee of such DMM unit shall participate in a proxy contest of a company if such DMM member is registered in the stock of that company.

DMMs as Directors

(b) No DMM member or his or her DMM unit or any other member, [principle] principal executive, officer or employee of such DMM unit shall be a director of a company if such DMM member is registered in the stock of that company.

••• Supplementary Material:

**.10 Control relationships—Business transactions—Finder's Fees.—**

(a)(1) A DMM unit shall report the beneficial ownership of more than 5% of the outstanding shares of any equity security that is allocated to that unit. A DMM unit shall update any report if its beneficial ownership is reduced below 5% or exceeds 10% of the outstanding shares of any equity security that is allocated to that unit.

(2) The reporting obligation in (a)(1) shall not apply if the security is:

(i) a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument, unless the conversion or redemption of such security would directly or indirectly cause the DMM unit to have a position in any security allocated to the DMM unit that is in excess of the limits set forth in section (a)(1) of this Rule;

(ii) reserved; or

(iii) a security, such as a currency warrant, that trades in relationship to the value of that underlying currency, or a security, such as an index warrant, that trades in relationship to the value of that underlying index.

(3) A DMM unit may not in any event acquire directly or indirectly the beneficial ownership of more than 25% of any security allocated to that unit or any security specified in (a)(2)(i), (ii), or (iii) of this Rule. This provision applies regardless of whether the beneficial ownership is acquired for investment, trading, or any other purpose.

(b)(1) No DMM unit or any other member, [principle] principal executive, officer or employee thereof shall engage in any business transaction (including loans, etc.) with any company in whose stock the DMM is registered, or accept a finder's fee from such company, except as provided below.

(2) Notwithstanding the provision in (b)(1) above, a DMM registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(3) The provisions of (b)(1) shall not apply to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

.11 Reserved.

.12 Reserved.

.20 The restrictions in paragraph .10 above relating to business transactions between a DMM or his or her DMM unit or any other member, [principle] principal executive, officer or employee thereof shall not apply to derivative instruments based on one or more securities, currencies or commodities (collectively referred to as Exchange-Traded Funds (or "ETFs")), if the following conditions are met:

(i) the DMM or his or her DMM unit or any other member, [principle] principal executive, officer or employee thereof only enters into the business transaction with the

sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and

(ii) any fee or other compensation in connection with the business transaction paid to the DMM or his or her DMM unit or any other member, [principle] principal executive, officer or employee thereof must not be dependent on the trading price or daily trading volume of the ETF; and

(iii) the DMM or his or her DMM unit or any other member, [principle] principal executive, officer or employee thereof must notify and provide a full description to the Exchange of any business transaction or relationship, except those of a routine and generally available nature as described in paragraph .10 above, it may have with any sponsor of an ETF that he or it is registered as DMM in.

.30 - .40 No change

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