(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f) [5] thereunder because it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible. At any time within sixty days of the filing of the rule change, the Commission may summarily abrogate 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 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*. Please include File Number SR–NSCC–2005–12 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSCC–2005–12. 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 rule change that are filed with the Commission, and all written communications relating to the 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. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.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–NSCC–2005–12 and should be submitted on or before October 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5010 Filed 9–13–05; 8:45 am]

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[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52391; File No. SR–NYSE–2004–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 352 Concerning Guarantees and Sharing in Accounts

September 7, 2005.

I. Introduction

On August 14, 2004, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule relating to amendments to Rule 352 concerning guarantees and sharing in accounts. On July 6, 2005, the Exchange filed Amendment No. 1 to its proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 5, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Background

Rule 352 (the ''Rule'') generally prohibits members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer. The amendments proposed herein expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose.

Loan Arrangements Between Registered Personnel and Customers

The Exchange does not currently have a rule that specifically addresses the issue of loan arrangements between member organization personnel and customers; however, the Exchange believes that such arrangements, given their inherent potential for conflict of interest and abuse, are generally not a good business practice. Bearing this concern in mind, it is recognized that there are certain situations when such loans may be appropriate. Accordingly, proposed paragraphs (e) and (f) to Rule 352 would limit loan arrangements, between persons associated with a member organization in any registered capacity and customers, to certain prescribed situations. As outlined in detail below, proposed Rule 352(e) requires written supervisory procedures that would limit loan arrangements between registered member organization personnel and customers of the member organization to those arising either in the context of a prescribed personal or business relationship outside of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52179 (July 29, 2005), 70 FR 45461 (August 5, 2005).

broker-customer relationship, or to those involving other registered personnel of the member organization. Proposed Rule 352(f) further requires detailed written supervisory procedures that would require that certain loan arrangements between registered member organization personnel and customers of the member organization be disclosed to the member organization for prior approval.

Limitations on Loan Arrangements

Proposed Rule 352(e) would permit a person associated with a member organization in any registered capacity to borrow money from or lend money to a customer of such person only if: (A) The member organization has written supervisory procedures permitting the borrowing and lending of money between such registered persons and their customers; and (B) the lending or borrowing arrangement meets one of the following conditions: (1) The customer is a member of such registered person's immediate family; or (2) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; or (3) the customer and the registered person are both registered persons of the same member organization; or (4) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker/customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

Loan Procedures

Proposed Rule 352(f)(1) would require member organizations to pre-approve, in writing, the lending or borrowing arrangements described in proposed paragraphs (e)(3) (between registered persons of the same member organization); (e)(4) (involving a personal relationship outside the context of the broker-customer relationship); and (e)(5) (involving a business relationship outside the context of the broker-customer relationship).

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(1) between a person associated with a member organization in any registered capacity and a customer that is a member of such registered person's immediate family, proposed paragraph (f)(2) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive member organization approval either prior to or subsequent to entering into a lending or borrowing arrangement with an immediate family member. For purposes of this proposed rule, the term ''immediate family'' is defined in proposed paragraph 352(g) to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and would also include any other person whom the registered person supports, directly or indirectly, to a material extent.

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(2) between a person associated with a member organization in any registered capacity and a customer that is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business, proposed paragraph (f)(3) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive approval either prior to or subsequent to entering into a lending or borrowing arrangements with a customer that is a prescribed financial institution, provided that the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. For purposes of proposed paragraph (e)(2), a member organization may rely on the registered person's written representation that the terms of the loan meet the standards required by proposed paragraph (f)(3).

Integration of the Rule's Interpretation

The NYSE Interpretation Handbook contains an exception to the general prohibition, under current Rule 352(c), against sharing or agreeing to share in any profits or losses in any customer's account or from any transaction transacted therein.[4] The Interpretation states, in part, that: ''* * * where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with Section 205(1) and the rules thereunder, the arrangement will not be deemed violative of Rule 352(c) if the arrangement arises in the context of such member organization's advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.''

Since this exemption for member organizations acting in the capacity of a registered investment adviser is not referred to nor reasonably implied by the Rule, it is proposed that it be deleted in its entirety from the Interpretation Handbook, and integrated into the proposed Rule text.[5]

In addition, the Interpretation text reference to Section 205(1) of the Investment Advisers Act of 1940 is inaccurate. It is proposed that the reference be corrected to read ''Section 205 * * * unless exempt pursuant to Section 203(b) of the Advisers Act.''[6] The proposed change simply clarifies the scope and original intent of the reference, and does not alter the substance of the Interpretation.

Miscellaneous Rule Text Clarifications

The Exchange has taken this opportunity to rearrange and clarify certain sections of the Rule. For example, the text of Rule 352(b) arguably suggests an application of the Rule to a category broader than that of ''customers'' (*e.g.*, encompassing broker-dealers). Specifically, it states that ''no member, allied member, registered representative or officer shall guarantee or in any way represent that either he or his employer will guarantee any customer against loss in *any* account or on *any* transaction'' (italics added). It is proposed that this text be amended to specify ''customer'' accounts and ''customer'' transactions in order to remove any suggestion that proposed Rule 352 is to be construed more expansively than other NYSE sales practice rules. These proposed amendments are consistent with both the original intent of the Rule and the Exchange's ongoing interpretation of it.

It is proposed that the text of Rule 352(c) be amended, as reflected in proposed Rule 352(b), to clarify that its general restriction against receiving or agreeing to receive a share in the profits or losses of any customer account extends to officers of a member organization who are acting in the capacity of a registered representative.

[4] *See* text of the proposed rule change which is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[5] *Id.*

[6] *Id.*

Inclusion of the term ''officer'' also makes proposed paragraph (b) consistent with proposed paragraph (a).

Current Rule 352 paragraphs (a) and (b) have been combined into proposed paragraph (a). Further, the exceptions to the general prohibition against sharing in profits and losses which are currently in paragraphs .10 and .20 of the Rule's Supplemental Material have been clarified and relocated to proposed paragraph 352(c) under the heading ''Joint Accounts and Order Errors.''

Additional amendments are non-substantive changes, such as the clarification of rule text and the revision of dated language to reflect current usage.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) [7] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to accomplish these ends (1) by placing limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other, (2) by integrating the Rule's Interpretation into the proposed Rule, and (3) by clarifying both the Rule's scope and purpose with respect to prohibiting members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2004–47), as amended, be, and hereby is, approved.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5007 Filed 9–13–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52386; File No. SR–NYSE–2005–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Interpretation of NYSE Rule 311 (''Formation and Approval of Member Organizations'') Codifying Certain Qualification Requirements for Criteria for Dual- or Multi-Designation of Principal Executive Officers

September 7, 2005.

On January 6, 2005, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 311 to codify certain qualification requirements for principal executive officers, Chief Financial Officers (''CFOs'') and Chief Operations Officers (''COOs'') and to state when an individual may serve in two or more of these roles. On July 25, 2005, the NYSE amended the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on August 5, 2005.[3] The Commission received no comment letters on the proposal.

The proposed rule change would amend NYSE Rule 311 to codify: (i) Qualification requirements for COOs and CFOs; (ii) criteria for the dual-designation of introducing firm COOs and CFOs; (iii) criteria for other dual designation and multi-designation of principal executive officer functions; (iv) criteria for co-designation of such functions; and (v) limitations on the employment of principal executive officers.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[5] which states that an Exchange may prescribe standards of training, experience and competence for persons associated with Exchange members and may bar a natural person from becoming a member or person associated with a member if such standards are not met. The Commission believes that by codifying and clarifying the Exchange's policies, the proposed amendments should provide Exchange members or persons associated with Exchange members, guidance on the Exchange's requirements for designation of principal executive officers. The Commission notes that the requirement contained in Interpretation of NYSE Rule 311(b)(5) Section /03 for prompt notification to the Exchange, and in Interpretation of NYSE Rule 311(b)(5) Sections /04, /05 and /06 for prior written approval of the Exchange will enable the Exchange to monitor the decisions of member organizations to ensure that they are appropriately tailored to meet the needs of each organization as well as the qualification requirements of the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2005–04), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5008 Filed 9–13–05; 8:45 am]

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[9] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52181 (August 1, 2005), 70 FR 45459.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(c)(3)(B).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).