SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53983; File No. SR-NYSE-2005-60)

June 14, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Proposed New Rules 342.24 ("Annual Branch Office Inspection") and 342.25 ("Risk-Based Surveillance and Branch Office Identification") to Permit Member Organizations to Classify Appropriate Branch Offices for Cyclical Inspections and Proposed New Rule 342.26 ("Criteria for Inspection Programs")

On August 15, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to adopt Exchange Rules 342.24 ("Annual Branch Office Inspection") and 342.25 ("Risk-Based Surveillance and Branch Office Identification") to permit organizations to classify appropriate branch offices for cyclical inspections and 342.26 ("Criteria for Inspection Programs"). The Exchange filed Amendment No. 2 to the proposed rule change on April 7, 2006.[3] The proposed rule change, as amended, was published for comment in the Federal Register on April 27, 2006.[4] The Commission received no comments regarding the proposal, as amended. On June 12, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[5] This order approves the proposed rule change, as amended.

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

2 17 CFR 240.19b-4.

3 The Exchange filed Amendment No. 1 to the proposed rule change on October 31, 2005 and withdrew Amendment No. 1 on April 7, 2006.

4 See Securities Exchange Act Release No. 53689 (April 20, 2006), 71 FR 24881 ("Notice").

5 In Amendment No. 3, the Exchange made several non-substantive clarifying changes to the rule text. This was a technical amendment and is not subject to notice and comment.

I. Description of Proposed Rule Change

The proposed amendments would permit member organizations, with the written approval of the Exchange, to exempt certain branch offices from the general annual branch office inspection requirement of Exchange Rule 342 ("Offices – Approval, Supervision and Control"). Proposed Exchange Rules 342.24 and 342.25 would permit member organizations to submit to the Exchange, for approval, policies and procedures outlining a risk-based surveillance system that the firm would use to identify branch offices requiring less frequent than annual inspections.[6] Such policies and procedures must reflect the member organization's business model and product mix, and must provide, at a minimum, for: (1) flexibility to initiate "for-cause" inspections, when circumstances warrant, of any branch office that has been exempted from the standard annual inspection cycle; (2) inspection on an unannounced basis of no less than half of the branch offices inspected each year; and (3) a system to allow employees to report compliance issues on a confidential basis outside of the branch office chain of command. As discussed in the Notice and set forth in proposed Exchange Rule 342.25(B), certain prescribed criteria, applied to each branch office, also would be required of any acceptable risk-based surveillance system used to determine which branch offices could be exempted from annual inspection.

The Rule states that certain branch offices would not be deemed appropriate for an exemption under the proposed amendments. Specifically, offices with one or more registered representatives subject to special supervision in the current or immediately preceding year, offices with 25 or more registered individuals, offices in the top 20% of production or customer

[6] In addition, a member organization would still be able to seek an exemption if it has demonstrated to the satisfaction of the Exchange that because of proximity, special reporting, or supervisory practice, other arrangements may satisfy the Exchange rule's requirements for a particular branch office. See proposed Exchange Rule 342.24(A)(1).

assets at the member organization, and any branch offices exercising supervision over other branch offices or that have not been inspected within the previous two calendar years would not be eligible for exemption from the annual inspection requirement. In fact, the proposed amendments would require that all branch offices, without exception, be inspected at least once every three calendar years. Finally, the proposed amendments would re-position language from Interpretation /03 of Exchange Rule 342(a)(b) into the text of Exchange Rule 342.

II. Discussion

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.[7] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, appropriately balances the need for firms to surveil and inspect their branch offices with the need to provide firms with some flexibility to adapt branch office inspections according to changing circumstances. Specifically, the proposal would allow member organizations to seek an exemption from the requirement to inspect branch offices annually based upon written policies and procedures that provide for a risk-based surveillance system. The policies and procedures would have to be submitted to and approved by the Exchange. The Commission believes that

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

[8] 15 U.S.C. 78f(b)(5).

the ability to implement a limited risk-based surveillance system for certain branch offices should allow firms to concentrate their surveillance and compliance resources on those branch offices that require more frequent and thorough on-site inspections.

Furthermore, the Exchange expressly sets forth in proposed Rule 342.25 the risk factors and criteria that firms, at a minimum, should consider when developing their policies and procedures. The Commission believes that providing explicit factors and criteria to distinguish those offices that warrant annual inspection from those that might not should also enable member organizations to more effectively direct a firm's attention to those regulatory risk areas in need of closer scrutiny during the course of an on-site inspection. The proposed criteria should provide a more uniform standard for firms seeking an exemption from the annual branch office inspection.

Furthermore, the Commission believes that the proposed amendments contain appropriate limitations on a firm's ability to apply the exemption from the requirement to inspect branch offices every year. For instance, the proposal specifically excludes certain offices, given their size, scope of supervisory activities, or other factors, from eligibility for the exemption. The Rule requires firms to retain the ability to initiate "for cause" inspections of a branch office where developments during the year require a reconsideration of a branch's exemption. Requiring firms to use unannounced branch office inspections for no less than half of the branch offices inspected each year should provide additional incentive to branch office personnel to make compliance with the Exchange's rules and the securities laws a priority. Furthermore, the Commission believes that requiring firms to allow employees to report compliance issues on a confidential basis outside of the branch office chain of command and requiring branch office inspections to be carried out by a person independent of the branch office in question should encourage branch office employees to report issues of regulatory concern. The Commission also notes that the proposal would require every branch office, without exception, to be inspected at least once every three calendar years. The Commission emphasizes that, notwithstanding any exemption granted under the proposed rules, each member firm is subject to an ongoing duty to supervise each branch office and monitor for compliance with all applicable securities laws and regulations.[9]

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-NYSE-2005-60), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris
Secretary

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9 See Section 15(b)(4)(E) of the Act, 15 U.S.C. 78o(b)(4)(E).

10 15 U.S.C. 78s(b)(2).

11 17 CFR 200.30-3(a)(12).