

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52269; File No. SR-NYSE-2005-19)

Aug. 16, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members that Use Appendix E to Calculate Net Capital to File Supplemental and Alternative Reports

On March 8, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed a proposed rule change 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 under the Act.² The proposed rule change amends NYSE Rule 418 to require member organizations approved by the Commission to use Appendix E to Rule 15c3-1 under the Act³ to calculate net capital (“CSE broker-dealers”) to file supplemental and alternative reports with the Exchange. The proposed rule change was published for comment in the Federal Register on July 14, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a-5 under the Act⁵ contains broker-dealer reporting requirements. Broker-dealers file the monthly and quarterly reports required by Rule 17a-5(a) on Form

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.15c3-1e. The Commission amended Rule 15c3-1 to establish this voluntary, alternative method of computing net capital, which is applicable to firms that qualify for consolidated supervised entity (“CSE”) treatment. Securities Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34428 (June 21, 2004).

⁴ See Securities Exchange Act Release No. 51980 (July 6, 2005), 70 FR 40767 (July 14, 2005).

⁵ 17 CFR 240.17a-5.

X-17A-5 (the “FOCUS Report”).⁶ Pursuant to Rule 17a-5(a)(5),⁷ CSE broker-dealers are required to file certain additional monthly and quarterly reports. The Exchange has created a modified FOCUS Report form for CSE broker-dealers. The form contains new line items to capture the additional required reports. The proposed rule amendment is designed to require CSE broker-dealers to provide the additional reports to the Exchange.

Under NYSE Rule 418, the Exchange may at any time require any member or member organization to be audited in accordance with the requirements of Rule 17a-5. The proposed amendment adds NYSE Rule 418.25, which would require member organizations that are CSE broker-dealers to file such supplemental and alternative reports as may be prescribed by the Exchange. A copy of the modified FOCUS report that CSE broker-dealers would have to file with the Exchange under proposed Rule 418.25 is available on the Exchange’s Internet Web site (<http://www.nyse.com>). The Commission finds that the NYSE’s proposal to amend Rule 418 is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange.⁸ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable

⁶ 17 CFR 249.617.

⁷ 17 CFR 240.17a-5(a)(5).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

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

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

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78f(b)(2).

¹¹ 17 CFR 200.30–3(a)(12).