SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74035; File No. SR–NYSE–2014–63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Rules 311 and 313 To Add Limited Liability Companies as Eligible Member Organizations and Delineate the Information Limited Liability Companies Must Submit to the Exchange as Part of the Membership Process; Eliminate the Requirement That a Member Corporation Be Created or Organized, and Maintain Its Principal Place of Business, in the United States; and Make Additional Related Amendments To Update Its Membership Rules

January 12, 2015.

I. Introduction

On November 12, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to amend NYSE Rules 311 and 313 to add limited liability companies (''LLCs'') to the types of eligible member organizations and delineate the information LLCs must submit to the Exchange as part of the membership process; eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States; and make additional related amendments to update its membership rules. The proposed rule change was published for comment in the **Federal Register** on November 28, 2014.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

A. Rule 311

NYSE Rule 311 governs the formation and approval of member organizations. The Exchange proposes to revise Rule 311 to explicitly provide for LLCs to apply to become member organizations and eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States.

The Exchange's membership rules currently provide for member organizations to be corporations or partnerships, but have not explicitly provided for LLCs.[4] The Exchange proposes to add LLCs to the types of potential member organizations and require LLCs to meet the same requirements currently applicable to partnerships and corporations set forth in Rule 311(b). As part of the proposed revision, the Exchange seeks to add a new section (4) to Rule 311(b) requiring every member of an LLC to be a member, principal executive, or approved person.[5] The Exchange also proposes to amend current Rule 311(b)(6) to reflect that proposed LLC member organizations must, like corporations and partnerships, also comply with any additional requirements as the rules of the Exchange may prescribe. In addition, the Exchange proposes to add new Supplementary Material .16 to Rule 311 to specify that LLC applicants for Exchange membership are subject to Rule 313.24 regarding the submission of copies of proposed or existing limited liability company documents and other agreements.

The Exchange also proposes to amend Rule 311(f) to eliminate the geographic limitation on incorporation and domicile of corporation members and delete the related interpretations of Rule 311(f). The first sentence of Rule 311(f) currently provides that every member corporation be a corporation ''created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.'' [6] The Exchange does not believe that the Exchange's restriction on whether foreign entities may be a member organization is consistent with either federal rules or those of other self-regulatory organizations (''SRO''). The Exchange states that rules promulgated pursuant to the Act require, under certain circumstances, a foreign broker-dealer to register with the Commission.[7] The Exchange also states that other SROs, including the Financial Industry Regulatory Authority, Inc. (''FINRA''), do not require their members to be domiciled in the United States.[8]

The Exchange believes that the current restriction in Rule 311(f) puts it at a competitive disadvantage because it restricts foreign broker-dealers that are registered with the Commission and are members of another SRO from also becoming Exchange member organizations. The Exchange notes that its rules already require member organizations to meet prerequisites as specified in Rule 2(b). Specifically, regardless of corporate form, all member organizations must be registered broker-dealers that are members of FINRA or another registered securities exchange. If a registered broker-dealer transacts business with public customers or conducts business on the Floor of the Exchange, such member organization must be a member of FINRA.

The Exchange further notes that a member organization will be subject to regulatory examination and jurisdiction for misconduct whether or not it is based in the United States. However, for the avoidance of doubt, as discussed below, the Exchange proposes to add supplementary material to Rule 313 based on NASD Rule 1090 that imposes certain requirements on foreign members that do not maintain an office in the United States.

B. Rule 313

NYSE Rule 313 sets forth certain corporate or partnership documents that each member organization must submit to enter into and continue in NYSE membership. The Rule also sets forth certain restrictions on capital withdrawals and distributions applicable to member corporations and partnerships. The Exchange proposes to amend Rule 313 to delineate the types of documents that LLCs must submit that, as noted, mirror the requirements currently in place for member corporations and partnerships.

First, the Exchange proposes to add a subsection (d) to Rule 313 requiring all

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73672 (Nov. 21, 2014), 79 FR 70909 (Nov. 28, 2014) (''Notice'').

[4] Current Rule 311(f) permits the Exchange to approve ''entities that have characteristics essentially similar to corporations, partnerships, or both'' as a member organization ''on such terms and conditions as the Exchange may prescribe.''

[5] Rule 311(b)(2) and (b)(3) currently impose the same requirement on the relevant control persons at corporations and partnerships, respectively.

[6] The first sentence of Rule 311(f) also provides that every member firm organization shall be a partnership or corporation. This statement is redundant to Rule 311(b), which the Exchange is amending to add LLCs. Accordingly, the Exchange proposes to delete the first sentence of Rule 311(f) in its entirety.

[7] *See* 17 CFR 240.15a–6 and Commission Guide to Broker-Dealer Registration, Division of Trading and Markets, available at *http://www.sec.gov/divisions/marketreg/bdguide.htm* (foreign broker-dealers that, from the outside of the United States, induce or attempt to induce securities transactions by any person in the United States, or that use the means or instrumentalities of interstate commerce in the United States for this purpose, must register as broker-dealers with the Commission).

[8] *See, e.g.,* NASD Membership and Registration Rules (1000 Series). NASD Rule 1090 imposes specific requirements on members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the SEC and the Exchange, which the Exchange proposes to import into Rule 313. *See infra* note 9 and accompanying text. *See also* BATS Exchange, Inc. Rules 2.3, 2.5 and 2.6.

articles of organization and operating documents for LLCs to be submitted for Exchange approval prior to becoming effective. Relatedly, the Exchange proposes to add Supplementary Material .24 setting forth that existing LLCs must promptly submit certified copies (to the extent possible) of articles of organization and operating agreements to the Exchange.

Second, the Exchange proposes to add Supplementary Material .25 providing restrictions on capital withdrawals by LLC members that are substantially the same as those applicable to corporations and partnerships. The Supplementary Material would provide that the capital contribution of any LLC member may not be withdrawn on less than six months' written notice of withdrawal given no sooner than six months after such contribution was first made without the prior written approval of the Exchange. The Supplementary Material would also specify that each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a member's capital contribution or if any withdrawal is not made because prohibited under the provisions of Rule 15c3–1 under the Act.

Third, the Exchange proposes to add Supplementary Material .26 providing that LLCs not organized under the laws of New York State must subject themselves to the following restrictions: No distributions shall be declared or paid that impair the LLC's capital; and no distribution of assets shall be made to any member unless the value of the LLC's assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. These proposed restrictions are based on existing restrictions applicable to member corporations and partnerships.

In addition, as noted above, the Exchange proposes to add new Supplementary Material .27 to Rule 313 specifying the requirements applicable to Foreign Member Organizations. The proposed new rule text would adopt, without substantive change, paragraphs (a), (b), and (c) of NASD Rule 1090 (Foreign Members), which impose specific requirements on FINRA members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed by the SEC and FINRA.[9] As proposed, foreign member organizations that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange would be required to: (1) Prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (2) reimburse the Exchange or its representatives for expenses incurred in connection with examinations of the member organization to the extent that such expenses exceed the cost of examining a member organization located within the continental United States in the geographic location most distant from the Exchange's principal office or, in such other amount as the Exchange may deem to be an equitable allocation of such expenses; and (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

The Exchange also proposes to eliminate certain restrictions, which the Exchange considers redundant, on member organizations and prospective member organizations organized as partnerships and corporations. The Exchange proposes to eliminate the requirement in Rule 313.11 that the partnership articles of each member firm provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange. Rule 313.11 already requires the Exchange's prior written approval for any such capital withdrawals, and member organizations need to monitor for and comply with the prohibition, including whether particular withdrawals violate net capital requirements. The Exchange believes that because Exchange rules already govern this behavior, a partnership seeking approval as a member organization would not need to amend its partnership articles to reflect this existing rule requirement.[10]

Further, the Exchange proposes to eliminate the requirement in Rule 313.20 that prospective member corporations submit an opinion of counsel stating, among other things, that the corporation is duly organized and existing, that its stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective. Corporate members are required under the Rule to submit relevant corporate documents, including articles of incorporation, that contain the same information required in the opinion of counsel. The Exchange represents that requiring a legal opinion attesting to facts contained in a corporation's public filings is redundant and, given the expense, potentially a disincentive to smaller entities applying for Exchange membership.

Similarly, the Exchange proposes to remove the requirement in Rule 313.23 that the opinion of counsel submitted to the Exchange at the time the corporation applies for approval under Rule 313.20 state the extent to which the corporation has made the following prohibitions legally effective: The prohibition on declaring or paying a dividend that impairs the capital of the corporation and the prohibition on distributing assets to any stockholder unless the value of the corporate assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. Rule 313.23 would continue to prohibit corporation members from declaring or paying dividends or distributing corporate assets that impair the corporation's capital, and member corporations would not be relieved of the obligation to monitor and enforce these prohibitions. The Exchange believes that requiring these representations in a separate legal opinion is redundant and serves no necessary regulatory or other purpose.[11]

Finally, the Exchange proposes to make certain miscellaneous amendments to Rule 313. Specifically, the Exchange proposes to replace outdated references to ''Regulation and Surveillance'' with ''the Exchange'' in

[9] The Exchange is not proposing to adopt a rule similar to NASD Rule 1090(d), which requires foreign members to ''utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of the Association, except where both parties to a transaction agree otherwise.'' The Exchange agrees with FINRA, which similarly recommended skipping paragraph (d) as part of its contemplated adoption of NASD Rule 1090, that the provision is ''outdated'' and that clearing arrangements are better addressed by FINRA Rule 4311 (Carrying Agreements). *See* FINRA Regulatory Notice 13–29 at 27 (Sept. 2013). FINRA Rule 4311 governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected.

[10] *See also infra* note 11.

[11] FINRA Rule 4110 (Capital Compliance) contains similar prohibitions on capital withdrawals by FINRA members without requiring that the prohibitions be reflected in a firm's partnership articles or requiring a legal opinion that the member has made the prohibitions legally effective. *See* FINRA Rule 4110(c)(1) (''No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing.'').

Rules 313.10 and 313.20.[12] Similarly, the Exchange proposes to replace outdated references to ''photostatic'' copies in Rules 313.10 and 313.20 in connection with the submission of documents to the Exchange and replace them with ''electronically or mechanically reproduced.''

As noted above, the Commission received no comments on the proposed rule change.

III. Discussion and Commission Findings

After carefully considering the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission agrees with the Exchange that adding LLCs to the list of eligible member organizations would remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding the types of organizational forms a member organization may take. The Exchange also believes that permitting LLCs to become member organizations subject to the same restrictions and requirements currently applicable to corporations and partnerships also protects investors and the public interest by holding LLCs to the same high standards.

In addition, permitting non-United States-based registered broker-dealers that are members of FINRA or another registered securities exchange and that do not have their principal place of business in the United States to become Exchange member organizations would remove impediments to and perfect the mechanism of a free and open market by removing geographic restrictions on Exchange membership that are not required by FINRA or other exchanges. Broadening the Exchange membership pool by facilitating the participation of additional foreign-based U.S. registered broker-dealers would benefit investors and the public interest by increasing market participation and depth at the Exchange. Moreover, adoption of specific requirements for foreign members that do not maintain an office in the United States based on NASD Rule 1090 would further assure that foreign Exchange members, once approved, remain subject to regulatory examination and jurisdiction.

In addition, updating the Exchange's rules to remove requirements that the Exchange believes are redundant—that a member firm's partnership articles provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange, that prospective member corporations submit an opinion of counsel reciting facts contained in its public filings, and that certain prohibitions have been made legally effective—would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that potential member organizations, persons subject to the Exchange's jurisdiction, regulators, and the public could more easily navigate the Exchange's rulebook and better understand what obligations attach and when. Further, updating the Exchange's rules to remove what the Exchange considers redundant requirements also would protect investors as well as the public interest by providing transparency and reducing potential confusion regarding the Exchange membership process that may result from having what the Exchange characterizes as obsolete rules and outdated guidelines in the Exchange's rulebook. For the same reasons, updating the Exchange's rules to remove requirements that the Exchange considers outdated would remove impediments to and perfect the mechanism of a free and open market and a national market system and is equally designed to protect investors as well as the public interest.

Based on the foregoing, the Commission finds the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2014–63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

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[12] Under Rule 0, references to the Exchange also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to a Regulatory Services Agreement (''RSA''). FINRA currently provides member application proceedings services to the Exchange pursuant to an RSA.

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

[14] 15 U.S.C. 78f(b)(5).

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

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 74033; File No. SR–FICC–2014–12]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fee Schedule in the Mortgage-Backed Securities Division Clearing Rules

January 12, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2014 the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FICC. FICC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder [4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is filed by FICC and consists of modifications to the fee schedule in the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''Clearing Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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 these statements may be examined at the places specified in Item IV below. FICC has prepared

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).