

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) <sup>7</sup> 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,<sup>8</sup> that the proposed rule change (SR–NYSE–2004–47), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

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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”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup>

**Jonathan G. Katz,**

*Secretary.*

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<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30–3(a)(12).

<sup>9</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 52181 (August 1, 2005), 70 FR 45459.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).