

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.<sup>10</sup>

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would benefit investors by clarifying the terms of BOX's \$2.50 Strike Price Program, and would promote competition by bringing the rules regarding BOX's program into agreement with the rules of other options exchanges with similar programs.<sup>11</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed 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 the 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 proposed 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-47 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-47. 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-BSE-2007-47 and should be submitted on or before November 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56653; File No. SR-NASD-2007-056]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change To Establish a Membership Waive-In Process for Certain NYSE Member Organizations**

October 12, 2007.

**I. Introduction**

On July 25, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA"))<sup>1</sup> filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to adopt Interpretive Material 1013-1 ("IM-1013-1"), a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations, and Interpretive Material Section 4(b)(1) and 4(e) ("IM-Section 4(b)(1) and 4(e)") to Schedule A of the By-Laws, a membership application fee waiver for those NYSE member organizations that apply for membership pursuant to IM-1013-1. The proposed rule change was published for comment in the **Federal Register** on September 7, 2007.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 56347 (August 31, 2007), 72 FR 51483 ("Notice").

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before doing so.

<sup>11</sup> See, e.g., International Securities Exchange Rule 504(g).

<sup>12</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## II. Description of the Proposed Rule Change

In connection with the recently approved plan to consolidate the member regulation operations of NASD and NYSE Regulation into a single organization ("Transaction"),<sup>5</sup> NASD proposed to establish a waive-in process to enable approximately 95 NYSE member organizations that are not also NASD members to become members of FINRA. The proposed waive-in process would apply to firms that, as of July 25, 2007: (1) Are approved NYSE member organizations; or (2) have submitted an application to become a NYSE member organization and are subsequently approved for NYSE membership (together, "NYSE-only member organizations"), provided that such firms were not also NASD members as of the closing of the Transaction (*i.e.*, as of July 30, 2007).<sup>6</sup>

IM-1013-1 would establish a process to allow NYSE-only member organizations to become automatically FINRA members and to register automatically all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA, upon submission to FINRA's Member Regulation Department ("Department") of a signed waive-in membership application ("Waive-In Application").<sup>7</sup> The Department would review the Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been

<sup>5</sup> On July 26, 2007, the Commission approved amendments to NASD's By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007). The date of closing of the Transaction was July 30, 2007.

<sup>6</sup> The NYSE filed a companion proposal to amend NYSE Rule 2(b) to require its member organizations to be members of FINRA, which the Commission approved today. See Securities Exchange Act Release No. 56654 (SR-NYSE-2007-67) ("Release No. 34-56654").

<sup>7</sup> The Waive-In Application would require information such as: (1) General company information (including the Central Registration Depository ("CRD") Number and contact person); (2) an attestation that all information on the applicant's CRD form, as of the date of submission of the Waive-In Application is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures; (3) the identity of the firm's Executive Representative; (4) completed and signed Entitlement Forms; (5) a signed FINRA Membership Agreement; and (6) representations that the applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate, that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

approved for membership. The Membership Agreement would become effective on the date of such notification letter.<sup>8</sup> In addition, the proposed rule change would create IM-Section 4(b)(1) and 4(e) to Schedule A of the NASD By-Laws, which would exempt the applicants from the fee for each initial Form U-4 for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to IM-1013-1 and from the FINRA membership application fee.

As set forth in proposed IM-1013-1, the NYSE-only member organizations admitted to FINRA membership would be subject to the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities").<sup>9</sup> If a NYSE-only member organization admitted pursuant to proposed IM-1013-1 seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to those NYSE rules incorporated by FINRA.

In addition, associated persons of a NYSE-only member organization admitted to FINRA pursuant to IM-1013-1 would be subject to the same set of rules as the firm with which they are associated, namely the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, and the NASD Rule 8000 and 9000 Series.

<sup>8</sup> The Commission notes that, under the amendment to NYSE Rule 2(b), which was approved today, NYSE-only member organizations are provided a 60 day grace period within which they must apply for and be approved for FINRA membership. See Release No. 34-56654, *supra* note 6.

<sup>9</sup> For purposes of this filing, activities that are ancillary to a Floor broker's core business include: (i) Routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations; or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(2) of the Exchange Act,<sup>11</sup> which requires a national securities association to be so organized and have the capacity to carry out the purposes of the Exchange Act and to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act. Further, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>12</sup> in that it is designed, among other things, 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 believes that the proposed rule change is intended to facilitate the consolidation of the member firm regulation functions of NASD and NYSE Regulation under a single self-regulatory organization, thereby encouraging more effective and efficient regulation of brokers and dealers and their associated persons. The Commission notes that NYSE has a comprehensive membership application and review process.<sup>13</sup> Accordingly, eligible NYSE-only member organizations that will become FINRA members pursuant to the waive-in process already have been subject to NYSE's extensive screening process.

The proposed rule change provides eligible NYSE-only member organizations (and their associated persons) with an expedited process to become FINRA members, provided that they engage in permitted floor activities only. Moreover, an eligible NYSE-only member organization would not be assessed either FINRA's membership application fee or the initial Form U-4 registration fee when it submits its application for FINRA membership.

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(2).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> See, e.g., NYSE Rules 301 (Qualifications for Membership) and 304A (Member and Allied Member Examination Requirements).

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NASD-2007-056), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56654; File No. SR-NYSE-2007-67]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.)

October 12, 2007.

#### I. Introduction

On July 24, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) 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 reflect changes in the Exchange’s membership requirements as a result of the consolidation of the member firm regulatory functions of the National Association of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc. (“NYSE Regulation”), which resulted in a combined self-regulatory organization called Financial Industry Regulatory Authority, Inc. (“FINRA”).<sup>3</sup> The proposed rule change was published for comment in the *Federal Register* on August 7, 2007.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

In connection with the recently approved plan to consolidate the

member regulation operations of NASD and the NYSE Regulation into a single organization (“Transaction”),<sup>5</sup> NYSE proposes to require all organizations that currently are NYSE member organizations but are not NASD members (“NYSE-only member organizations”), or are organizations that propose to become NYSE member organizations, to also be members of FINRA. The Exchange notes that most NYSE member organizations are already also members of FINRA. According to the Exchange, there are approximately 95 NYSE member organizations that are not currently FINRA members and that will be required to become FINRA members in order to remain NYSE member organizations and to utilize a NYSE trading license.<sup>6</sup> FINRA would become the designated examining authority (“DEA”) for all NYSE member organizations.<sup>7</sup>

The Exchange proposes to amend the definition of “member organization” in NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to keep NYSE Rule 308 (Acceptability Proceedings) in order to retain for itself the discretion to deem an applicant unacceptable for NYSE membership.

NYSE-only member organizations would have a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed rule change or NASD’s proposed rule change to amend its membership rules to permit eligible NYSE-only member organizations to become FINRA members through an expedited process.<sup>8</sup>

<sup>5</sup> On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (“Release No. 34-56145”). The date of closing of the Transaction was July 30, 2007.

<sup>6</sup> NYSE also has allowed an organization to be an NYSE “regulation only” member without purchasing a trading license, if the organization qualifies and subjects itself to NYSE regulatory jurisdiction. After the Transaction, NYSE will continue to provide this status to an organization that is or becomes a FINRA member and subjects itself to NYSE jurisdiction, even though the organization does not have a NYSE trading license.

<sup>7</sup> Historically, NYSE was the DEA for virtually all of its member organizations. As part of the Transaction, it is contemplated that the Commission will name FINRA as the DEA for all the organizations for which NYSE was the DEA.

<sup>8</sup> NASD filed a companion proposal, which the Commission approved today, that specifies the terms on which eligible NYSE-only member organizations can become FINRA members on an expedited basis. Pursuant to that proposal, NASD

#### III. Discussion and Commission Findings

After careful consideration, 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<sup>9</sup> and, in particular, the requirements of Section 6 of the Act.<sup>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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 notes that most NYSE member organizations are also members of FINRA. Thus, the proposed rule change will primarily affect approximately 95 NYSE-only member organizations, in addition to those organizations that propose to become NYSE member organizations.

The Commission believes that the proposed rule change would further the consolidation of the member firm regulation functions of NASD and NYSE Regulation, as approved by the Commission.<sup>12</sup> The Commission notes that the approximately 95 NYSE-only member organizations that must become FINRA members will be able to avail themselves of the expedited FINRA membership procedures and the waiver of certain FINRA registration and application fees.<sup>13</sup> Further, the Commission believes that the 60-day grace period for eligible NYSE-only

would adopt Interpretive Material 1013-1 (“IM-1013-1”), which establishes a membership waiver in process for eligible NYSE-only member organizations, and Interpretive Material Section 4(b)(1) and 4(e) to Schedule A of the By-Laws, which exempts the applicants from the fee for each initial Form U-4 for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to IM-1013-1 and from the FINRA membership application fee. See Securities Exchange Act Release No. 56653 (SR-NASD-2007-056) (“Release No. 34-56653”).

<sup>9</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Release No. 34-56145, *supra* note 5.

<sup>13</sup> See Release No. 34-56653, *supra* note 8.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

<sup>4</sup> See Securities Exchange Act Release No. 56173 (July 31, 2007), 72 FR 44205 (“Notice”).