

Maker that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an NMS stock that is a covered security subject to Rule 101 or 102 of Regulation M would be required to request an excused withdrawal of its quotations in the ADF in the offered security. FINRA believes that it is more appropriate to impose such obligation on the member that is posting the quotation, rather than require the manager of the distribution to do so on behalf of each member. FINRA also is proposing to amend NASD Rule 4200A, which sets forth the definitions applicable to the ADF rules, to make technical and conforming changes such as adding necessary references to Regulation M and deleting definitions that are currently not used in the ADF rules.

FINRA believes that the proposed rule change will significantly improve the clarity of the current rules and enhance the information FINRA receives, which will better enable FINRA to monitor member OTC quoting and trading for purposes of Regulation M compliance.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>23</sup> which requires, among other things, that FINRA rules must 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 rules being adopted as part of the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes that those rules have since proven effective in achieving the statutory mandates. In addition, FINRA believes that the proposed rule change will significantly improve the clarity of FINRA's current Regulation M-related rules and enhance FINRA's ability to monitor member OTC quoting and trading for purposes of Regulation M compliance.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 insert SR-FINRA-2008-039 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-039. 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 FINRA. 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-FINRA-2008-039 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence Harmon,**

*Acting Secretary.*

[FR Doc. E8-18371 Filed 8-8-08; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58291; File No. SR-FINRA-2008-043]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Establish a Membership Waive-In Process and Fee Waiver for Certain NYSE Alternext U.S. LLC Member Organizations**

August 1, 2008.

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> notice is hereby given that on July 30, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>24</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>23</sup> 15 U.S.C. 78o-3(b)(6).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to establish Interpretive Material 1013-2 ("IM-1013-2"), a membership waive-in process for certain American Stock Exchange LLC ("AMEX"), to be renamed NYSE Alternext U.S. LLC ("NYSE Alternext"), member organizations and to amend Interpretive Material Section 4(b)(1) and (e) to Schedule A of the By-Laws to establish a membership application fee waiver for those NYSE Alternext member organizations that apply for membership pursuant to IM-1013-2. The Waive-In Membership Application Form is attached as Exhibit 3 to this rule filing. The text of the proposed rule change is available at the FINRA's principal office, the Commission's Public Reference Room, and <http://www.finra.org>.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

On January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger ("Merger Agreement") whereby, through a series of mergers, NYSE Euronext will acquire AMEX ("Merger Transaction")<sup>3</sup> and as a result of these mergers (the "Mergers"), AMEX will become one of the U.S. wholly owned subsidiaries of NYSE Group and will be renamed NYSE Alternext U.S. LLC.

To achieve efficiencies in the regulation of NYSE Alternext member organizations, NYSE intends to (1) require mandatory FINRA and NYSE membership for NYSE Alternext member organizations (other than those

that exclusively trade options),<sup>4</sup> (2) adopt a series of member conduct rules for NYSE Alternext member organizations that are substantively identical to the Incorporated NYSE Rules that are the subject of an Agreement among FINRA, New York Stock Exchange LLC, and NYSE Regulation, Inc. ("NYSE Regulation"), pursuant to Rule 17d-2 under the Act (the "17d-2 Agreement"), and (3) amend the 17d-2 Agreement to include NYSE Alternext as a party to that agreement so that FINRA will assume regulatory responsibility consistent with the terms of that agreement for the NYSE Alternext Equities rules that are substantively identical to the Incorporated NYSE Rules.

In furtherance of these efforts, the proposed rule change would establish a membership waive-in process for certain NYSE Alternext member organizations, similar to the process for NYSE member organizations.<sup>5</sup>

The proposed rule change would apply to any NYSE Alternext member organization that holds a valid 86 Trinity Permit<sup>6</sup> as of the date such firm transfers its equities operations to the NYSE Alternext Trading Systems<sup>7</sup> and is not currently a FINRA member.

FINRA recognizes that the AMEX and NYSE have comprehensive membership applications and review processes based on similar principles and standards to that of FINRA. As such, those NYSE Alternext member organizations that will become FINRA members already have been subjected to an extensive screening process. Therefore, the proposed rule change would establish

<sup>4</sup> See SR-NYSE-2008-70.

<sup>5</sup> FINRA established a waive-in process to expedite the approval of membership applications of NYSE-only member organizations that were required to become FINRA members. That process is set forth in IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations). See Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (File No. SR-NASD-2007-056).

<sup>6</sup> The "86 Trinity Permit" will authorize owners, lessees or nominees of AMEX Regular Members or Options Principal Members ("OPMs"), AMEX limited trading permit holders, and AMEX associate members who were authorized to trade on the AMEX immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"). NYSE Alternext will recognize the former AMEX (i) owners, lessees or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

<sup>7</sup> In connection with the Mergers, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to the NYSE's trading systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems").

IM-1013-2 (Membership Waive-In Process for Certain NYSE Alternext U.S. LLC Member Organizations), a process that would make such firms eligible to automatically become a FINRA member and to automatically register all associated persons whose registrations are approved with NYSE Alternext in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("the Department") of a signed waive-in membership application ("Waive-In Application").<sup>8</sup>

Associated persons of the NYSE Alternext member organizations will be automatically registered with FINRA only for those registration categories that are recognized jointly by FINRA and NYSE Alternext—*e.g.*, a General Securities Representative (Series 7); provided, however, that the firm must, upon approval of FINRA membership, submit an amended Form U4 for each such associated person, denoting the corresponding FINRA registration category(ies) for such person. A list of those registration categories is included as part of the Waive-In Application. (Please note that both FINRA and AMEX recognize the Series 9/10, but for FINRA, persons who have passed the Series 9/10 may function only as a General Securities Sales Supervisor (see NASD Rule 1022(g)). For those associated persons registered in a category recognized only by NYSE Alternext, FINRA will acknowledge such registrations to permit such persons to continue to function in the capacity for which they are registered.

The Waive-In Application would require the following information:

(1) General company information, including 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;

<sup>8</sup> The NYSE is proposing a 60-day grace period for such NYSE Alternext member organizations to apply for and be approved for FINRA membership. In coordination with this proposal and with respect to the requirement in Incorporated NYSE Rule 2, FINRA would permit a 60-day grace period within which these member organizations must apply for and be approved for FINRA membership. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext Trading Systems.

<sup>3</sup> See SR-AMEX-2008-62 and SR-AMEX-2008-63.

(4) Completed and signed Entitlement Forms (unless previously submitted);

(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.

The proposed rule change would require the Department to review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement would become effective on the date of such notification letter.

As set forth in proposed IM-1013-2, the NYSE Alternext member organizations admitted pursuant to proposed IM-1013-2, being member organizations of both NYSE and NYSE Alternext, would be subject to the consolidated FINRA rules<sup>9</sup> (provided that firms admitted to FINRA membership under IM-1013-1 also are subject to the consolidated FINRA rules),<sup>10</sup> the NYSE rules incorporated by FINRA,<sup>11</sup> the FINRA By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their NYSE or NYSE Alternext securities business is limited to floor-based

activities in either NYSE-traded or NYSE Alternext-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE Alternext floor business under NYSE Rule 70.40 or NYSE Alternext Equities Rule 70.40 ("permitted floor activities").<sup>12</sup>

If an NYSE Alternext member organization admitted pursuant to proposed IM-1013-2 seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, 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 the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

Associated persons of an NYSE Alternext member organization admitted to FINRA pursuant to proposed IM-1013-2 would be subject to the same set of rules as the firm with which they are associated. Inasmuch as these associated persons would not be subject to NASD Rules 1021 or 1031, they would not be required to register in a registration category recognized by FINRA. To the extent that such persons continue to be associated solely with a firm whose business complies with the limitations imposed on those firms admitted to FINRA pursuant to proposed IM-1013-2, FINRA is not imposing any registration requirements beyond those required by the NYSE or NYSE Alternext, provided their business is confined in scope as contemplated in proposed IM-1013-2.<sup>13</sup>

Finally, the proposed rule change would amend Interpretive Material Section 4(b)(1) and 4(e) of Schedule A of the FINRA By-Laws to exempt NYSE Alternext applicants from the assessment of a FINRA membership

application fee and from fees for each initial Form U4 filed by the applicant with FINRA for the registration of a representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to proposed IM-1013-2. FINRA believes the exemption is appropriate because the waive-in application process will not require the same resources by the Department as when a new applicant that is not already a member of NYSE or NYSE Alternext seeks membership.

The effective date of the proposed rule change will be the date of Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must 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 proposed rule change will facilitate the application process for NYSE Alternext member organizations with a waive-in process that ensures that these firms meet suitable standards for admission into FINRA.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which FINRA consents, the Commission will:

(A) By order approve such proposed rule change; or

<sup>9</sup> The new consolidated FINRA rulebook ("Consolidated FINRA Rulebook") will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.

<sup>10</sup> FINRA is proposing that firms admitted to FINRA membership under IM-1013-1 be subject to the consolidated FINRA rules. See Securities Exchange Act Release No. 58206 (July 22, 2008), 73 FR 43808 (July 28, 2008).

<sup>11</sup> The NYSE notes in its filing SR-NYSE-2008-70 that while the AMEX rules governing membership are substantially similar to NYSE rules governing membership (i.e., NYSE Rules 311-313), there are certain additional requirements that are not contained in the AMEX rules, including a requirement that a member organization submit an opinion of counsel that a member corporation's stock is validly issued and outstanding and that restrictions and provisions required by NYSE on the transfer, issuance, conversion and redemption of its stock have been made legally effective. See NYSE Rule 313.20. NYSE proposes to allow NYSE Alternext member organizations six months from the date the member organization transfers its equities operations to the NYSE Alternext Trading Systems to comply with the membership requirements in NYSE Rules 311-313. FINRA also proposes to grant NYSE Alternext member organizations becoming FINRA members pursuant to IM-1013-2 an identical period to comply with Incorporated NYSE Rules 311-313.

<sup>12</sup> For purposes of this filing, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded or NYSE Alternext-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, NYSE Alternext-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded or NYSE Alternext-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded or NYSE Alternext-traded securities.

<sup>13</sup> The licensing and other requirements applicable to the NYSE Alternext member organizations and their associated persons are subject to change as part of the process of establishing the Consolidated FINRA Rulebook.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-FINRA-2008-043 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-043. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2008-043 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58308; File No. SR-FINRA-2008-027]

### Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

August 5, 2008.

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> notice is hereby given that on July 18, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the new consolidated FINRA rulebook ("Consolidated FINRA Rulebook")<sup>3</sup> and to delete the

<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> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules (hereinafter, "NYSE Rules") apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

corresponding provisions in NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### (1) Purpose

As part of the process of developing the Consolidated FINRA Rulebook, FINRA is proposing to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the Consolidated FINRA Rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

##### (A) *Proposed FINRA Rule 3220*

###### (1) Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or