

All submissions should refer to File Number SR–NASDAQ–2009–026. 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 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–NASDAQ–2009–026 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59655; File No. SR–NYSE–2009–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC, as Modified by Amendment No. 2, Changing Certain NYSE Rules and Rule Interpretations To Harmonize Them With Changes to Corresponding Rules Recently Filed by the Financial Industry Regulatory Authority, Inc.

March 30, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the

“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 9, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change, which was withdrawn.⁴ On March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes changes to certain NYSE Rules and Rule Interpretations, retroactively effective to December 15, 2008, to harmonize them with changes to corresponding rules recently filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission or submitted for immediate effectiveness.⁶ FINRA filed the rule changes as part of its effort to develop a new consolidated rulebook for its members (the “Consolidated FINRA Rulebook”).⁷ The

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ On March 30, 2009, the Exchange withdrew Amendment No. 1.

⁵ Amendment No. 2 to SR–NYSE–2009–25 replaces the original filing in its entirety. References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. Telephone call between Nancy Burke-Sanow, Division of Trading and Markets, Commission, and Clare Saperstein, Managing Director, NYSE, March 30, 2009.

⁶ See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057). See also FINRA Regulatory Notice 08–57, October 16, 2008.

⁷ The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE (“FINRA Incorporated NYSE Rules”) (together, referred to as the “Transitional Rulebook”), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook

text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On July 30, 2007, the National Association of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc. (“NYSE”) consolidated their member firm regulation operations into a combined organization, FINRA.⁸ As discussed in more detail below, FINRA recently filed, and the Commission approved, changes to certain NASD and FINRA Incorporated NYSE Rules and adopted a number of Consolidated FINRA Rules to replace other NASD and FINRA Incorporated NYSE Rules. The effective date for the FINRA rule changes was December 15, 2008.

To reduce regulatory duplication, the Exchange proposes to harmonize NYSE Rules with the recently approved FINRA rule changes by deleting certain NYSE Rules and Rule Interpretations and replacing them with rules that are

consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁸ Pursuant to Rule 17d–2 under the Act, NYSE, NYSE and NASD entered into an agreement (the “Agreement”) to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for certain NYSE and NASD Rules (the “Common Rules”). See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR–NASDAQ–2007–054). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

²¹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C.78s(b)(1).

identical to, or substantially identical to, the recently approved FINRA Rules, subject to technical amendments to make them specific to the Exchange. To more readily identify those NYSE Rules that are harmonized with FINRA Rules, the Exchange proposes to adopt the same rule numbering used in the Consolidated FINRA Rulebook.

The Exchange further proposes that these rule changes be retroactively effective to December 15, 2008, the same as the effective date of FINRA's rule changes on which this filing is based.

The FINRA approved rule changes and the Exchange's proposed conforming rule changes are summarized below.⁹

FINRA Rule Filing SR-FINRA-2008-027¹⁰

FINRA adopted NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA Rules 3220 and 2070, respectively. FINRA Rule 3220 prohibits members or associated persons from giving gifts or gratuities in excess of \$100 per year to an agent or employee of another person where it relates to the business of the employer of the recipient. FINRA Rule 2070 addresses conflicts of interest involving FINRA employees.

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 407(a) and 407.10 (Transactions—Employees of Members, Member Organizations and the Exchange) and 350 (Compensation or Gratuities to Employees of Others), and Rule Interpretations 350/01 (Application) and/02 (Conflicts of Interest).¹¹ FINRA also deleted FINRA Incorporated NYSE Rule Interpretation 350/03 (Entertainment), which deals with business entertainment expenses, since it is addressed in a separate rule filing.¹²

⁹ NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. See SR-NYSEALTR-2009-26 (formally submitted March 9, 2009), amended.

¹⁰ See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008).

¹¹ FINRA also noted that certain provisions of FINRA Incorporated NYSE Rules 350 and 350.10 and Rule Interpretation 350/02 related to operations/Floor employees of the Exchange are not applicable to FINRA and could be deleted. See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008). The Exchange believes that the substance of these provisions is adequately addressed in existing NYSE Rules and the proposed NYSE Rules 2070 and 3220.

¹² See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (SR-

Accordingly, to harmonize the NYSE Rules with the approved FINRA rule changes, the Exchange proposes to (i) delete NYSE Rule 350 and Rule Interpretations 350/01–03, and (ii) adopt proposed NYSE Rules 2070 and 3220, which are nearly identical to FINRA Rules 2070 and 3220, to replace the deleted NYSE Rules. The Exchange believes that proposed NYSE Rules 2070 and 3220, together with other existing and/or proposed NYSE Rules, address the specific provisions of NYSE Rule 350 and the related Rule Interpretations.

Specifically, NYSE Rule 350(a) addresses the giving of gifts or gratuities by members, member organizations and their employees to other members, member organizations, their employees or the employees of non-members engaged in certain businesses. NYSE Rules 350(a) and (b) address the employment or compensation of others by members, member organizations and their employees, including Floor-based employees of other members or member organizations. Under Rule 350(b), payment in excess of \$200 for employment or compensation of a Floor employee of another member or member organization requires the employee to become registered with such member or member organization.

The Exchange believes that proposed new NYSE Rule 3220 replaces NYSE Rule 350(a) because it addresses the giving of gifts or gratuities to, and the employment or compensation for services of, the employees of others, both members and non-members. Proposed Rule 3220(a) harmonizes with FINRA Rule 3220(a) because it prohibits the giving of gifts or gratuities in excess of \$100 per year to “any person, principal, proprietor, employee, agent or representative of another person” where that gift is related to the business of the recipient's employer.

Proposed NYSE Rule 3220(b) replaces NYSE Rule 350(b) because it addresses situations requiring dual employment and prior written consent when compensation provided to another employee exceeds a specified amount. Rule 350(b) requires dual employment for any payments over \$200 to Floor employees whereas proposed Rule 3220(b) requires dual employment for any payment made to any employee for employment or services over the \$100

NASD-2006-44), as subsequently amended, January 2, 2008. The Exchange has proposed the adoption of a new NYSE Rule 350A that is substantively duplicative of the rule proposed in SR-NASD-2006-044. See Securities Exchange Act Release No. 55766 (May 15, 2007), 72 FR 28534 (May 21, 2007) (SR-NYSE-2006-06). These filings have not been approved by the Commission as of the date of this filing.

limit prescribed by 3220(a), including Floor employees of a member organization.

Because under proposed NYSE Rule 3220(a) any employee, including Floor employees, receiving more than \$100 for services from another member organization must be dually employed with that member organization, the requirement under NYSE Rule 350(b) that a Floor employee receiving more than \$200 in compensation be dually registered is no longer necessary. Under NYSE Rules 35 and 35.50, which require that all member and member organization Floor employees must be registered with the Exchange on Form U-4, any Floor employee that is dually employed must be registered with each member organization for whom he or she works. Accordingly, because the new dual employment requirement under proposed Rule 3220(b) triggers the Rule 35 dual registration requirements, it is not necessary to specify dual registration in proposed Rule 3220. Upon adoption of Rule 3220 the Exchange intends to issue guidance to its members and member organizations reminding them that any person who is dually employed by two or more members or member organizations must be registered with each such member or member organization pursuant to Rule 35.

NYSE Rules 350(a) and 350.10 also specifically address, *inter alia*, the giving of gifts or gratuities to, or the employment or compensation of, employees of the Exchange by members, member organizations and their employees. In particular, Rule 350.10 specifies, *inter alia*, the procedures for seeking the Exchange's consent for the employment or compensation of Exchange employees and describes the types of dual-employment arrangements generally acceptable to the Exchange and those that are not acceptable.

The Exchange believes that proposed NYSE Rules 3220 and 2070 specifically address the provisions of NYSE Rule 350(a) and 350.10 dealing expressly with Exchange employees. To begin with, proposed Rule 3220 concerns the giving of gifts or gratuities to, or the employment or compensation of, any employee of another, which would include employees of the Exchange. In addition, proposed Rule 2070(c) specifically provides that, notwithstanding the more general prescriptions of Rule 3220(a), members and member organizations are prohibited from giving anything of value to an Exchange employee responsible for any regulatory matter involving such member or member organization. The Exchange did not include the standards

or procedures for dual-employment arrangements for its employees contained in Rule 350.10 into the proposed Rules 2070 and 3220 because those rules bind only Exchange members and member organizations and not its employees. The Exchange does believe, however, that proposed Rules 2070 and 3220 governing member conduct, together with the Exchange's internal policies and procedures governing the acceptance of gifts and gratuities and dual employment arrangements by its employees, provide sufficient protection against any improper relationships between its employees and its members.

NYSE Rule Interpretation 350/01 prohibits, in conjunction with NYSE Rule 401 (Business Conduct), conflicts of interest (via gifts, gratuities or compensation) between member organizations and agents or employees of customers. Rule Interpretation 350/01 also specifically prohibits member organizations from aiding and abetting fraudulent practices by money managers. NYSE Rule Interpretation 350/02 cautions member organizations about possible conflicts of interest when Floor employees are employed by other member organizations, including the monitoring of the amount and type of compensation paid to such employees.

The Exchange believes that proposed NYSE Rule 3220—which, as described above, deals more generally with the provision of gifts or compensation to employees of others—when read with other current and proposed NYSE Rules, prohibits the same types of conduct specifically referenced in NYSE Rule Interpretations 350/01 and /02. For example, current NYSE Rule 476(a)(1) prohibits members and member organizations from violating any provision of the Act and current NYSE Rule 476(a)(5) prohibits engaging in fraud or fraudulent acts. In addition, proposed NYSE Rules 2010 and 2020, which require member organizations to observe high standards of commercial honor, to use just and equitable principles of trade, and prohibit the use of manipulative, deceptive or fraudulent devices, would also apply to such conduct.¹³

NYSE Rule Interpretation 350/03 concerns business entertainment expenses. As noted above, FINRA deleted this Rule Interpretation on the grounds that its current interpretations of FINRA Rule 3220 concerning

business expenses, together with a pending rule filing, sufficiently govern this conduct. The Exchange believes that proposed NYSE Rule 3220—which is virtually identical to FINRA's Rule and, with respect to business entertainment expenses, FINRA would have regulatory responsibility for the NYSE rule pursuant to Rule 17d-2 of the Act—harmonizes with FINRA's approach to business entertainment expenses. Upon adoption of new NYSE Rule 3220, the Exchange intends to issue an Information Memorandum to its members and member organizations, which would include both dual FINRA and NYSE members and member organizations as well as NYSE-only members and member organizations, informing them of their obligations under the new Rule incorporating the FINRA interpretations under its Rule 3220 concerning business entertainment expenses.¹⁴

As proposed, new NYSE Rules 2070 and 3220 are virtually identical to FINRA Rules 2070 and 3220, previously approved by the Commission. With respect to proposed NYSE Rule 2070, the Exchange proposes minor changes to the approved FINRA version of that Rule to conform it to the Exchange, including changing the title of the Rule to “Transactions Involving Exchange Employees,” adding the term “member organization,” and adding language that requires member organizations to provide statements to the Exchange, rather than FINRA, for accounts held by Exchange employees. In addition, the Exchange proposes to add language to 2070(c) to include listing applications and delisting proceedings, and to remove the reference to dispute-resolution proceedings.¹⁵ With respect to proposed NYSE Rule 3220, to conform that Rule to Exchange definitions, the Exchange proposes adding the term “member organization.”

Finally, although FINRA has deleted language from FINRA Incorporated NYSE Rule 407, because the Exchange uses its corresponding NYSE Rule to,

¹⁴ Specifically, FINRA's interpretative guidance concerning business entertainment expenses includes a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretative letter and other interpretive guidance concerning business entertainment expenses are currently available at FINRA's Web site at <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm>.

¹⁵ Unlike FINRA, the Exchange still reviews listing applications and conducts delisting proceedings and believes it is appropriate to include these matters in proposed NYSE Rule 2070(c). In addition, since the Exchange no longer engages in dispute-resolution proceedings (*i.e.*, arbitrations), it does not need such a designation in proposed Rule 2070.

inter alia, monitor accounts held by Exchange employees, the Exchange will retain NYSE Rule 407 without change.¹⁶

FINRA Rule Filing SR-FINRA-2008-028¹⁷

FINRA adopted, *inter alia*, NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) as FINRA Rules 2010 and 2020, respectively. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. This Rule is used to protect market participants from dishonest and unfair practices even where those practices do not violate a specific law, rule or regulation. FINRA Rule 2020 is a general antifraud provision that is used to address a range of conduct, including market manipulation, excessive trading, insider trading and fraudulent misrepresentation. In a separate filing, FINRA also adopted FINRA Rule 6140 (Other Trading Practices), which replaces NASD Rule 5120 and governs a number of prohibited trading practices, including manipulation and disseminating false and misleading information about a security.¹⁸

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 401(a) (Business Conduct) and 435(1), (3) and (4) (Miscellaneous Prohibitions) and Rule Interpretation 401/01 (Trading Against Firm Recommendations).¹⁹ In addition,

¹⁶ Even though FINRA amended FINRA Incorporated NYSE Rule 407 when it adopted FINRA Rule 2070, those two rules are not inconsistent. NYSE Rule 407(a) provides, *inter alia*, that a member or member organization must obtain prior written consent before opening an account or executing a trade for an Exchange employee. FINRA Rule 2070(a) and proposed NYSE Rule 2070(a) simply require that, once a member or member organization has actual notice of an account held by a FINRA or Exchange employee, it must provide duplicate account statements to the Exchange. In addition, NYSE Rule 407.10 prescribes procedures for how Exchange employees may open accounts that are not addressed by FINRA Rule 2070 or proposed NYSE Rule 2070. Thus, the Exchange can retain NYSE Rule 407 in its original form as well as adopt NYSE Rule 2070 without any regulatory conflict for its members and member organizations.

¹⁷ See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

¹⁸ FINRA Rule 6140 was adopted in SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

¹⁹ In addition to being covered more generally by FINRA Rules 2010 and 2020, provisions (1), (3) and (4) of FINRA Incorporated NYSE Rule 435 are also

Continued

¹³ In this filing, *infra*, the Exchange proposes to replace current NYSE Rule 401(a), concerning good business practices, with proposed NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, approved by the Commission.

FINRA deleted NYSE Rule Interpretation 401/02 (Private Sales), which requires members to monitor personnel that market securities through private offerings, for being substantively duplicative of NASD Rule 3040 (Private Securities Transactions of an Associated Person) and NYSE Rules 407(b) and 407.11.²⁰ FINRA also deleted FINRA Incorporated NYSE Rule 435 provisions (6) and (7) as being obsolete and/or substantively duplicative of Federal Reserve Board Regulation T.

Accordingly, to harmonize NYSE Rules with the approved FINRA Rules, the Exchange similarly proposes to delete (i) NYSE Rule 401(a) and Rule Interpretations 401/01 and /02, (ii) NYSE Rule 476(a)(6),²¹ and (iii) NYSE Rules 435(1), (3), (4), (6), and (7). To replace NYSE Rules 401(a) and 476(a)(6) and Rule Interpretation 401/01, the Exchange proposes to adopt NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, except for adding the term "member organization." To replace NYSE Rules 435(1), (3), and (4), the Exchange proposes to adopt NYSE Rule 6140, which is substantially identical to FINRA Rule 6140, except for adding the term "member organization." For the same reasons proposed by FINRA, the Exchange proposes deleting NYSE Rule Interpretation 401/02 as being substantively duplicative of NYSE Rules 407(b) and 407.11, and deleting NYSE Rules 435(6) and (7) as being obsolete and/or substantively duplicative of Reserve Board Regulation T.

FINRA Rule Filing SR-FINRA-2008-029²²

FINRA deleted, *inter alia*, FINRA Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs—Disclosure and Monitoring),

substantially the same as FINRA Rule 6140. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

²⁰ FINRA has stated that these particular NASD and NYSE Rules are proposed for inclusion in the so-called "supervision rules" that are to be adopted at some later date as part of the Consolidated FINRA Rulebook. See FINRA *Regulatory Notice* 08-24.

²¹ Although it is not addressed by FINRA in its filing because it is not a FINRA Incorporated NYSE Rule subject to FINRA's regulatory responsibility under the Agreement, NYSE Rule 476(a)(6) prescribes that NYSE members and member organizations and their employees may not engage in conduct "inconsistent with just and equitable principles of trade[.]" The Exchange is hereby including this provision for deletion since "just and equitable principles of trade" are addressed in new NYSE Rule 2010, proposed for adoption herein.

²² See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction—Failure to Cooperate) as being duplicative of other NASD, FINRA or SEC rules or regulations or as being specific to the NYSE marketplace.

For the same reasons set forth in the approved FINRA filing, the Exchange proposes to delete NYSE Rule 405A. As FINRA noted, the prescriptions of Rule 405A are addressed under the Investment Advisers Act of 1940 and also, to the extent fee-based programs continue to exist in brokerage accounts, in NASD Notice to Members 03-68, which applies NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) to such accounts.²³ The Exchange is proposing to adopt NYSE Rule 2010, which is substantially the same as FINRA 2010, and so, to the extent fee-based programs continue to exist in brokerage accounts they would be addressed under the proposed Rule.²⁴

With respect to NYSE Rules 440F and 440G, as FINRA noted these Rules are Exchange specific—they require member organizations to file with the Exchange certain information about short sale and proprietary transactions executed at the Exchange. These Rules date to a time when trading at the Exchange was not as automated as it is today. Today, the Exchange is able to track short sale and proprietary trades through its "OCS" and "PTP" systems and run surveillances based on that information. Because the Exchange can derive that information from its trading systems, the Exchange no longer needs member organizations to file separately that information. The Exchange therefore believes that these Rules can be deleted in their entirety.

Finally, although FINRA has deleted FINRA Incorporated NYSE Rule 477,

²³ NASD Rule 2110 was adopted by FINRA as FINRA Rule 2010 in SR-FINRA-2008-028. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

²⁴ The Exchange is not adopting NASD Notice 03-68 as it is not a formally adopted rule. It is important to note that all of the Exchange's members and member organizations that have public customers are also members of, and have their member firm conduct regulated by, FINRA. Thus, to the extent FINRA Rule 2010 and new NYSE Rule 2010 apply to conduct involving non-managed fee-based account programs, which concerns member firm conduct, such application will be administered by FINRA. Upon adoption of new NYSE Rule 2010, the Exchange intends to issue guidance to its members and member organizations informing them of their obligations for such programs under the new Rule and FINRA rules.

because the Exchange uses that Rule for disciplinary purposes specific to the Exchange, the Exchange will retain NYSE Rule 477 without change. Because FINRA has deleted FINRA Incorporated NYSE Rule 477, NYSE Rule 477 will lose its status as a Common Rule and FINRA will no longer retain any regulatory responsibility for this Rule.

FINRA Rule Filing SR-FINRA-2008-030²⁵

FINRA adopted NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as FINRA Rule 3130. FINRA Rule 3130 requires each member firm to designate one or more principals to serve as Chief Compliance Officer and also requires that the Chief Executive Officer certify annually that the firm has established and maintained procedures and processes reasonably designed to ensure compliance with all applicable FINRA Rules and federal laws and regulations.

Because they are substantively duplicative of the FINRA Rule, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 342.30(d) and (e) (Annual Report and Certification) and Rule Interpretations 311(b)(5)/04 (Formation and Approval of Member Organizations—Officers—Other Dual or Multi-Designations) and /05 (Co-Designation of Principle Executive Officers) and 342.30(d)/01 (Annual Reports and Certification—Designation of Chief Compliance Officer) and (e)/01 (Annual Certification).

To harmonize NYSE Rules with the approved FINRA Rules, the Exchange proposes to (i) delete NYSE Rules 342.30(d) and (e) and Rule Interpretations 311(b)(5)/04 and /05 and 342.30(d)/01 and (e)/01, and (ii) replace them with proposed NYSE Rule 3130, which is substantially similar to FINRA Rule 3130. As proposed, NYSE Rule 3130 adopts the same language as FINRA Rule 3130, except for changing the term "member" to "member organization." Therefore, as proposed, NYSE Rule 3130 would require NYSE member organizations to complete their annual certifications at the same time they complete their certifications for FINRA.

²⁵ See Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030).

FINRA Rule Filing SR-FINRA-2008-033²⁶

FINRA adopted NASD Rule 3360 (Short-Interest Reporting) and FINRA Incorporated NYSE Rules 421(1) (Periodic Reports) and 421.10 (Short Positions) as new FINRA Rule 4560 and deleted these provisions from the Common Rules. FINRA Rule 4560 adopted rule text to consolidate the NASD and NYSE short-interest reporting requirements, including requiring members to follow certain reporting requirements for short positions in over-the-counter ("OTC") and exchange-listed securities for all customer and proprietary accounts.

Accordingly, the Exchange proposes to (i) delete NYSE Rules 421(1) and 421.10, and (ii) adopt proposed NYSE Rule 4560 to replace the deleted NYSE Rules. Proposed NYSE Rule 4560 is substantially identical to FINRA Rule 4560. To conform NYSE Rule 4560 to the Exchange, the Exchange proposes to remove the references to "OTC Equity Securities" in the rule, including provision (b)(3), and change the term "member" to "member organization." Because FINRA processes short-interest reporting on behalf of multiple exchanges, including the NYSE, proposed NYSE Rule 4560 will retain the requirement that member organizations report to FINRA.

FINRA Rule Filing SR-FINRA-2008-039²⁷

FINRA adopted, *inter alia*, provisions of NASD Rules 2710(b)(10) and (11) (Corporate Financing Rule—Underwriting Terms and Arrangements) and FINRA Incorporated NYSE Rule 392(a) (Notification Requirements for Offerings of Listed Securities) as consolidated FINRA Rule 5190. FINRA Rule 5190 contains the Regulation M-related notice requirements for members participating in securities offerings. FINRA also deleted FINRA Incorporated NYSE Rule 392(b) as specific to the NYSE marketplace.

The Exchange continues to have regulatory responsibility with respect to Regulation M and relies on reports filed by member organizations pursuant to NYSE Rule 392 to conduct certain surveillances. Accordingly, the Exchange continues to need an Exchange-specific rule requiring firms to report this information to the Exchange. However, in an effort to

harmonize the reporting obligations across the Exchange and FINRA as much as possible, the Exchange proposes to delete NYSE Rule 392 and adopt proposed NYSE Rule 5190.

Proposed NYSE Rule 5190 is substantially identical to FINRA Rule 5190, except for replacing the term "member" with the term "member organization", changing the references to "OTC Equity Securities" and "securities" in the Rule to "listed securities" in order to apply the Rule to the Exchange, and adding language to paragraphs (b) and (e) of the Rule concerning stabilizing bids in order to ensure that the requirements of NYSE Rule 392(b) are fully imported into new NYSE Rule 5190. The substantive reporting requirements of NYSE Rule 392 are essentially being reorganized and renumbered into new NYSE Rule 5190 to help eliminate confusion and regulatory duplication for its member organizations. Member organizations will therefore continue to file these reports with the Exchange.

FINRA Rule Filing SR-FINRA-2008-057²⁸

In this filing, FINRA proposed additional clean-up rule changes, including to FINRA Rules 3130, 4560 and 5190 addressed in this filing. The Exchange has included the proposed rule changes to NYSE Rule 5190; the proposed changes to FINRA Rules 3130 and 4560 are not applicable to NYSE Rules 3130 and 4560 as proposed for adoption.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,²⁹ in general, and further the objectives of Section 6(b)(5) of the Act,³⁰ in particular, in that they are 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 proposed rule changes also support the principles of Section 11A(a)(1)³¹ of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among

brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes will provide greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange therefore believes that the proposed rule changes support the objectives of the Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens.

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

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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 the 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. Please include File

²⁶ See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033).

²⁷ See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039).

²⁸ See Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR-FINRA-2008-057).

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78k-1(a)(1).

Number SR–NYSE–2009–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2009–25. 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 the 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–NYSE–2009–25 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7589 Filed 4–3–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59642; File No. SR–NYSEAmex–2009–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending the Option Trading Rules in Order To Extend the Penny Pilot Program

March 27, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 27, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b–4(f)(6) thereunder.⁵ 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

The Exchange proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues (“Pilot Program”) previously approved by the Securities and Exchange Commission (“Commission”), through July 3, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b–4(f)(6).

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program⁶ which is currently scheduled to expire on March 27, 2009 through July 3, 2009. This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to submit a report to the Commission that includes data and written analysis of information collected from February 1, 2009 through April 30, 2009 which will be submitted by the close of May 2009. The report will analyze the impact of the Pilot Program on market quality and options systems capacity. This report will include, but is not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative

⁶ See Securities Exchange Act Release No. 34–55162 (January 24, 2007), 72 FR 4738 (February 1, 2007); Securities Exchange Act Release No. 34–56567 (September 27, 2007), 72 FR 56396 (October 7, 2007).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

³² 17 CFR 200.30–3(a)(12).