

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62355; File No. SR-NYSE-2010-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Adopting New Rule 0 To Provide That Certain References in Exchange Rules Should Be Understood to Also Include FINRA, as Applicable.

June 22, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 14, 2010, New York Stock Exchange LLC ("NYSE" 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 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 adopt new Rule 0 to provide that certain references in Exchange rules should be understood to also include FINRA, as applicable. The text of the proposed rule change is available at the Exchange, the Commission's Web site at <http://www.sec.gov>, 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to add a new Rule 0 in connection with the FINRA Consolidation, to provide that certain references in Exchange rules should be understood to also include FINRA, as applicable. Specifically, proposed Rule 0 sets forth that the Exchange and FINRA are parties to a Regulatory Services Agreement ("RSA") pursuant to which FINRA has agreed to perform certain of the Exchange's member regulatory functions on behalf of the Exchange<sup>4</sup> and that Exchange rules that refer to NYSE Regulation, Inc., NYSE Regulation staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. The proposed new rule further provides that notwithstanding that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's member regulatory functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

##### Background

NYSE Group, NYSE Regulation, Inc. ("NYSE Regulation"), NYSE, NYSE Arca, Inc. ("NYSE Arca"), and NYSE Amex LLC ("NYSE Amex") (collectively, the "NYSE Group Exchanges") anticipate entering into an RSA and an allocation plan pursuant to Section 17(d)(1) of the Securities Exchange Act of 1934 and Rule 17d-2 thereunder that together, when effective, will result in consolidating with FINRA essentially all member regulatory functions that are currently performed by NYSE Regulation on behalf of the Exchange and the other NYSE Group Exchanges.<sup>5</sup> The evolution and increasing fragmentation of the securities markets has heightened the need for effective cross-market, cross-product oversight, and the Exchange believes that as a centralized regulatory utility, FINRA is well positioned to perform such consolidated regulatory services. Among other things, FINRA will conduct

<sup>4</sup> The Exchange and FINRA are also party to an allocation plan pursuant to Section 17(d)(1) of the Securities Exchange Act of 1934 and Rule 17d-2 thereunder.

<sup>5</sup> NYSE Regulation will continue to have ultimate authority (as between itself and FINRA) regarding the proper interpretation of the rules of the NYSE Group Exchanges. NYSE Regulation will also continue to be responsible for listing regulation at the NYSE Exchanges.

examinations and surveillance of member and member firm conduct under Exchange rules, investigate and enforce violations of Exchange rules, and conduct disciplinary proceedings arising out of such enforcement actions. NYSE Regulation currently performs the Exchange's regulatory functions pursuant to delegated authority.<sup>6</sup>

##### Proposed Rule

In connection with the FINRA Consolidation, the Exchange proposes to add new Rule 0. As proposed, Rule 0 sets forth that (i) the Exchange and FINRA are parties to an RSA pursuant to which FINRA has agreed to perform certain of the Exchange's member regulatory functions on behalf of the Exchange; and (ii) Exchange rules that refer to NYSE Regulation, Inc., NYSE Regulation staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. Additionally, proposed Rule 0 would set forth that notwithstanding that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's member regulatory functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

As noted above, the Exchange will be consolidating essentially all member regulatory functions with FINRA, in order to enhance cross-market, cross-product regulatory oversight and address the increasing market fragmentation. In connection therewith, FINRA is hiring substantially all the management and staff from NYSE Regulation who do market surveillance and enforcement for the NYSE Group Exchanges, so that the expertise related to those functions will reside with FINRA. Thus, the Exchange will necessarily rely on FINRA to determine the manner by which the regulatory services will be provided and the appropriate regulatory action to be taken to address particular matters. While the Exchange will have oversight rights with respect to FINRA's performance under the RSA, it will not exercise day to day control of such functions.

The proposed rule text is substantially identical to Nasdaq Rule 0130.

##### 2. Statutory Basis

The Exchange believes that the proposed rule changes [sic] are consistent with Section 6(b) of the

<sup>6</sup> NYSE Regulation currently performs the regulatory functions of NYSE Arca and NYSE Amex pursuant to RSAs.

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

<sup>2</sup> 15 U.S.C. 78a.

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

Act,<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that they [sic] 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 Exchange believes that the proposed rule changes [sic] support the objectives of the Act by providing greater transparency to members and member organizations that FINRA will be providing regulatory services on behalf of the Exchange and that therefore the entity contacting members and member organization in connection with such regulation may be FINRA, even if an Exchange rule specifies that NYSE Regulation or the Exchange will be performing such function.

#### *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**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, 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>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because such waiver will enable the Exchange to implement new Rule 0 commensurate with its entering into the RSA. In addition, as noted by the Exchange, the proposal is consistent with the rules of other self-regulatory organizations previously approved by the Commission.<sup>11</sup> For these reasons, the Commission designates the proposed rule change as 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 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-NYSE-2010-46 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-2010-46. 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 Web site viewing and printing 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-NYSE-2010-46 and should be submitted on or before July 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62354; File No. SR-NYSEAmex-2010-5]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 0 To Provide That Certain References in Exchange Rules Should Be Understood To Also Include FINRA, as Applicable**

June 22, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 14, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Commission is publishing this notice to

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> See Nasdaq Rule 0130 and BATS Rule 8.1(d).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

<sup>2</sup> 15 U.S.C. 78a.

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