

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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-NYSEAmex-2011-25 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-NYSEAmex-2011-25. 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 Web site viewing and printing 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-NYSEAmex-2011-25 and should be submitted on or before May 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64341; File No. SR-FINRA-2011-017]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 5131 (New Issue Allocations and Distributions)**

April 26, 2011.

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 April 18, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially 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 amend FINRA Rule 5131 (New Issue Allocations and Distributions) to simplify the spinning provision and to delay the implementation date of paragraphs (b) and (d)(4).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, 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 November 29, 2010, FINRA issued *Regulatory Notice 10-60* announcing

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</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.

Commission approval of SR–NASD–2003–140<sup>3</sup> and designating the effective date of new Rule 5131 (the “Rule”) as May 27, 2011.<sup>4</sup>

#### A. Spinning

Paragraph (b) of the Rule (Spinning), implements a recommendation from the IPO Advisory Committee Report<sup>5</sup> to prohibit spinning—*i.e.*, an underwriter’s allocation of IPO shares to directors or executives of investment banking clients in exchange for receipt of investment banking business. The primary means by which the Rule prohibits spinning is through a series of prophylactic prohibitions on the allocation of new issues. Specifically, the Rule prohibits allocations of a new issue to any account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest: (A) If the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (B) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (C) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Paragraph (b)(1) requires that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. However, because the term “investment banking personnel” is not defined in the Rule, members have raised concern that, if the term is read co-extensively with the definition of “investment banking services,” certain necessary functions traditionally performed by syndicate personnel would be prohibited. In light of this unintended consequence, FINRA is proposing to delete paragraph (b)(1).

FINRA believes that benefits of the anti-spinning provisions can be attained without this particular provision inasmuch as firms currently are required to have written policies and procedures with respect to the spinning prohibitions in paragraph (b)(2) pursuant to NASD Rule 3010.

In addition, upon further discussions with member firms regarding the steps necessary to prepare for compliance with the spinning provisions,<sup>6</sup> FINRA proposes to delay the implementation date of paragraph (b), as amended, until September 26, 2011.

#### B. Market Orders

Paragraph (d)(4) of the Rule (Market Orders) prohibits members from accepting any market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market. Members have requested additional time to develop a process for reliably identifying new issues and to modify their order handling systems to prevent the acceptance of market orders in new issue shares in contravention of the Rule. FINRA believes the Rule must carefully balance the investor protection concerns with needs of issuers in capital formation and market participants in price discovery. Accordingly, FINRA proposes to delay the implementation date of paragraph (d)(4) until September 26, 2011.

The effective date of the proposed rule change will be the date of Commission approval. However, FINRA also is proposing to delay the implementation date of paragraphs (b) and (d)(4) until September 26, 2011.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>7</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. FINRA believes the proposed rule change simplifies member obligations with respect to Rule 5131, thereby aiding

member compliance efforts and helping to maintain investor confidence in the capital markets.

#### 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 Exchange 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 45 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 or disapprove the proposed rule change, or

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

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

#### 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–2011–017 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–FINRA–2011–017. This file number should be included on the

<sup>3</sup> See Securities Exchange Act Release No. 63010 (September 29, 2010), 75 FR 61541 (October 5, 2010) (Order Approving File No. SR–NASD–2003–140).

<sup>4</sup> See *Regulatory Notice* 10–60 (November 2010) (Approval of New Issue Rule).

<sup>5</sup> *NYSE/NASD IPO Advisory Committee Report and Recommendations* (May 2003). <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p010373.pdf>.

<sup>6</sup> For example, members have requested additional time to: (1) Create additional forms, account documents and other measures of obtaining information from clients necessary to assess eligibility for new issue allocations under the new Rule; (2) build systems and surveillance infrastructure to ensure appropriate blocks of allocations; and (3) develop appropriate compliance policies and procedures and training materials on the new policies and procedures.

<sup>7</sup> 15 U.S.C. 78o–3(b)(6).

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 website viewing and printing 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-2011-017 and should be submitted on or before May 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Cathy H. Ahn,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64334; File No. SR-NYSE-2011-18]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 72(d) Regarding Agency Cross Transactions

April 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 19, 2011, 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, II, and III below, which Items have been prepared by the Exchange. 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 Rule 72(d) with respect to agency cross transactions. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the Commission's Public Reference Room, and at <http://www.sec.gov>.

#### 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 Exchange 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 Exchange proposes to amend Rule 72(d) with respect to agency cross transactions.<sup>3</sup> Legacy Rule 72(b) became current Rule 72(d) when the Exchange adopted the New Market Model Pilot. Although the rule text was renumbered as part of the New Market Model Pilot filing, the substance of the rule was not changed from its prior version.

<sup>3</sup> The provisions of Rule 72 are in effect during a pilot set to end on August 1, 2011. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (establishing the "New Market Model Pilot" or "Pilot"). See also Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR-NYSE-2009-113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR-NYSE-2010-25) (extending Pilot to September 30, 2010); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR-NYSE-2010-61) (extending Pilot to January 31, 2011); and 63618 (December 29, 2010), 76 FR 617 (January 5, 2011) (SR-NYSE-2010-85) (extending Pilot to August 1, 2011).

Under NYSE Rule 72(d), when a member<sup>4</sup> has an order to buy and an order to sell an equivalent amount of the same security, and both orders are for 25,000 shares or more, the member may "cross" those orders at a price at or within the Exchange best bid or offer and does not have to break up the cross transaction to trade with any bids or offers previously displayed at the Exchange best bid or offer, including any interest with priority (a "72(d) crossing transaction").<sup>5</sup> NYSE Rule 72(d) further provides that a member can effect a 72(d) crossing transaction only for the accounts of persons who are not members or member organizations. Accordingly, a Floor broker cannot use this provision for customers who are unaffiliated NYSE members or member organizations.

The Exchange proposes to amend Rule 72(d) to change the required minimum share size from 25,000 and instead require that both the order to buy and the order to sell be "block" orders, which the Exchange proposes to define for purposes of Rule 72 as at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.<sup>6</sup> This proposed change would more closely align agency cross transactions with other "block" orders with respect to the minimum applicable order size.<sup>7</sup>

The Exchange further proposes to amend Rule 72(d) to modify the current restriction that a member may not effect a 72(d) crossing transaction for the account of a member or member organization. The Exchange instead proposes to conform Rule 72(d) to Rule 90, and restrict a member from effecting a 72(d) crossing transaction for the account of such member or member organization, an account of an associated person, or an account with respect to which the member, member organization or associated person

<sup>4</sup> The reference to "member" in Rule 72(d) and this rule proposal means only Floor broker members. Designated Market Makers ("DMMs"), while members of the Exchange, do not have any agency relationships, and are therefore not able to effect this type of cross.

<sup>5</sup> A transaction effected at the cross price in reliance on NYSE Rule 72(d) is printed as a "stopped stock" to denote that the transaction was outside of normal market procedures. See NYSE Rule 128A.16. See also Securities Exchange Act Release No. 31343 (October 21, 1992), 57 FR 48645 (October 27, 1992) (SR-NYSE-90-39). The Exchange notes that block-sized crosses outside of the Exchange best bid or offer are addressed under NYSE Rule 127.

<sup>6</sup> The Exchange proposes to include the "block" definition as new Supplementary Material .10 to Rule 72.

<sup>7</sup> See, e.g., NYSE Rules 104 and 127, which provide that a "block" shall be at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.

<sup>8</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.