Number SR–EDGX–2012–26 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–EDGX–2012–26. This file number should be included on the subject line if email 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–EDGX–2012–26 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17197 Filed 7–13–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67374; File No. SR–NYSE–2012–15]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 440A and Interpretation 440A/01, Which Address Telemarketing, and Adopting New NYSE Rule 3230 To Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that June 25, 2012, 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 delete NYSE Rule 440A and Interpretation 440A/01, which address telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, 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 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 delete NYSE Rule 440A and Interpretation 440A/01, which address telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Exchange Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT LLC (''NYSE MKT'') became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Rule Change

The Exchange proposes to delete NYSE Rule 440A and Interpretation

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); Securities Exchange Act 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and Securities Exchange Act 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, 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 consolidation process, *see* FINRA Information Notice, March 12, 2008.

440A/01 and adopt new NYSE Rule 3230 to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated NYSE Rule 440A and Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NASD Rule 2212 and NYSE Rule 440A are similar rules that require members, among other things, to maintain do-not-call lists, limit the hours of telephone solicitations, and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[7] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[8]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in the national do-not-call registry.[9] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[10] The following year, the Commission approved amendments to NYSE Rule 440A, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles, and computer advertisements.[11]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[12] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[13]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed NYSE Rule 3230 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[14]

Telemarketing Requirements

Proposed NYSE Rule 3230(a) provides that no member organization or person associated with a member organization shall initiate any outbound telephone call[15] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the member organization has an established business relationship[16] with the person pursuant to paragraph 3230(m)(12)(A), the member organization has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member organization;[17] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[18] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[19]

National Do-Not-Call List Exceptions

Proposed NYSE Rule 3230(b) provides that a member organization making

[7] 15 U.S.C. 6101–6108.

[8] 15 U.S.C. 6102.

[9] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

[10] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[11] *See* Securities Exchange Act Release No. 52579 (October 7, 2005), 70 FR 60119 (October 14, 2005) (Order Approving File No. SR–NYSE–2004–73).

[12] 15 U.S.C. 6102.

[13] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[14] The text of proposed NYSE Rule 3230 would also be the same as FINRA Rule 3230, except that (i) the Exchange would substitute the term ''member organization'' for ''member;'' and (ii) the Exchange would add supplementary material to define the term ''person associated with a member organization'' to have the same meaning as the terms ''person associated with a member'' or ''associated person of a member'' as defined in Article I(rr) of the FINRA By-Laws.

[15] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed NYSE Rule 3230(m)(11), (14), (16), (17), and (20); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[16] An ''established business relationship'' is a relationship between a member organization and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the member organization or at a clearing firm that provides clearing services to the member organization within the 18 months immediately preceding the date of an outbound telephone call; (b) the member organization is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the member organization to inquire about a product or service offered by the member organization within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a member organization does not extend to the member organization's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member organization's affiliate does not extend to the member organization unless the person would reasonably expect the member organization to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member organization. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed NYSE Rule 3230(m)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[17] This restriction was previously included under NYSE Rule 440A(a). *See* the discussion below under Procedures.

[18] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[19] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The member organization has an established business relationship with the recipient of the call; [20]

(2) The member organization has obtained the person's prior express invitation or permission; [21] or

(3) The associated person making the call has a personal relationship [22] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in NYSE Rule 440A and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[23] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Safe Harbor Provision

Proposed NYSE Rule 3230(c) provides that a member organization or person associated with a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the member organization or person associated with a member organization demonstrates that the violation is the result of an error and that as part of the member organization's routine business practice, it meets the following standards:

(1) The member organization has established and implemented written procedures to comply with the national do-not-call rules;

(2) The member organization has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The member organization has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The member organization uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[26] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[27]

Procedures

Proposed NYSE Rule 3230(d) adopts procedures that member organizations must institute to comply with NYSE Rule 3230(a) prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under NYSE Rule 440A(b); however, the proposed rule change deletes the requirement that a member organization honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) Member organizations must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the member organization's do-not-call list.

(3) If a member organization receives a request from a person not to receive calls from that member organization, the member organization must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[28]

(4) Member organizations or persons associated with a member organization making an outbound telephone call must make certain caller disclosures set forth in NYSE Rule 3230(d)(4).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) A member organization making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[29]

Wireless Communications

Proposed NYSE Rule 3230(e) states that the provisions set forth in the rule are applicable to member organizations telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed NYSE Rule 3230(e) clarifies that the application of the rule also applies to persons associated with a member organization making outbound telephone calls to wireless telephone numbers.[30]

Outsourcing Telemarketing

NYSE Rule 3230(f) states that if a member organization uses another entity to perform telemarketing services on its behalf, the member organization remains responsible for ensuring compliance with all provisions contained in the rule. Proposed NYSE Rule 3230(f) also clarifies that member organizations must consider whether the entity or person that a member organization uses for outsourcing, must be appropriately registered or licensed, where required.[31]

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[20] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member organization even if the person continues to do business with the member organization.

[21] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*See* 15 U.S.C. 7001 *et seq.*) between the person and member organization which states that the person agrees to be contacted by the member organization and includes the telephone number to which the calls may be placed.

[22] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed NYSE Rule 3230(m)(18); *see also* FINRA Rule 3230(m)(18).

[23] *See supra* note 16; *see also* FINRA Rule 3230(a).

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[25] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[26] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[27] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[28] Member organizations must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the member organization on whose behalf the outbound telephone call is made, the member organization on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[29] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[30] *See also* FINRA Rule 3230(e).

[31] *See also* FINRA Rule 3230(f).

Caller Identification Information

Proposed NYSE Rule 3230(g) provides that any member organization that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the member organization's telephone carrier, the name of the member organization, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any member organization that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[32]

These provisions are similar to the caller identification provision in the FTC rules.[33] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[34]

Unencrypted Consumer Account Numbers

Proposed NYSE Rule 3230(h) prohibits a member organization or person associated with a member organization from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[35] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[36] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[37]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no member organization or person associated with a member organization may submit billing information[38] for payment without the express informed consent of the customer. Proposed NYSE Rule 3230(i) requires, for any telemarketing transaction, a member organization or person associated with a member organization to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information[39] and a free-to-pay conversion[40] feature, the member organization or person associated with a member organization must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the member organization or person associated with a member organization must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[41] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[42]

Abandoned Calls

Proposed NYSE Rule 3230(j) prohibits a member organization or person associated with a member organization from abandoning[43] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (j)(2) that requires:

(1) The member organization or person associated with a member organization to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The member organization or person associated with a member organization, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever a person associated with a member organization is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the member organization or person associated with a member organization promptly plays a recorded message stating the name and telephone number of the member organization or person associated with a member organization on whose behalf the call was placed; and

(4) The member organization to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[44] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[45]

Prerecorded Messages

Proposed NYSE Rule 3230(k) prohibits a member organization or person associated with a member organization from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[46]

[32] Caller identification information includes the telephone number and, when made available by the member organization's telephone carrier, the name of the member organization.

[33] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[34] *See* 47 CFR 64.1601(e).

[35] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[36] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[37] *See id.* at 4616.

[38] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed NYSE Rule 3230(m)(3).

[39] The term ''preacquired account information'' means any information that enables a member organization or person associated with a member organization to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed NYSE Rule 3230(m)(19).

[40] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed NYSE Rule 3230(m)(13).

[41] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[42] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[43] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to a member organization or person associated with a member organization within two seconds of the called person's completed greeting.

[44] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[45] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[46] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member organization to place

Continued

to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[47] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[48]

Credit Card Laundering

Proposed NYSE Rule 3230(l) prohibits credit card laundering, the practice of depositing into the credit card system [49] a sales draft that is not the result of a credit card transaction between the cardholder [50] and the member organization. Except as expressly permitted, the proposed rule change prohibits a member organization or person associated with a member organization from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft [51] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member organization;

(2) Employing, soliciting, or otherwise causing a merchant,[52] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement [53] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[54] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[55]

Definitions

Proposed NYSE Rule 3230(m) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,''''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and telemarketing''.[56] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes make NYSE Rule 3230 effective on the same date as FINRA makes FINRA Rule 3230 effective.[57]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [58] in general, and furthers the objectives of Section 6(b)(5) [59] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE member organizations that are also FINRA members are subject to both NYSE Rule 440A and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting Rule 3230 will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE Rules, it believes such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

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 Exchange Act.

prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the member organization; and (d) include the person's telephone number and signature (which may be obtained electronically under the E–Sign Act).

[47] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[48] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[49] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed NYSE Rule 3230(m)(7), (8), and (10).

[50] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed NYSE Rule 3230(m)(6).

[51] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed NYSE Rule 3230(m)(9).

[52] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed NYSE Rule 3230(m)(2) and (14).

[53] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed NYSE Rule 3230(m)(15).

[54] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[55] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

[56] *See* proposed NYSE Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed NYSE Rule 3230(m)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[57] *See supra* note 4.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(5).

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

The Exchange neither solicited nor received written comments 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 Exchange Act[60] and Rule 19b–4(f)(6) thereunder.[61] 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[62] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[63] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange 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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–15 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–2012–15. This file number should be included on the subject line if email 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2012–15 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17175 Filed 7–13–12; 8:45 am]

BILLING CODE 8011–01–P

[60] 15 U.S.C. 78s(b)(3)(A)(iii).

[61] 17 CFR 240.19b–4(f)(6).

[62] 17 CFR 240.19b–4(f)(6).

[63] 17 CFR 240.19b–4(f)(6)(iii).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Alternative Energy Sources, Inc., Arlington Hospitality, Inc., Consolidated Oil & Gas, Inc., CSMG Technologies, Inc., Dakotah, Incorporated, and DelSite, Inc.; Order of Suspension of Trading

July 12, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alternative Energy Sources, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Arlington Hospitality, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Consolidated Oil & Gas, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CSMG Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dakotah, Incorporated because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DelSite, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 12, 2012, through 11:59 p.m. EDT on July 25, 2012.