

August 4, 2008

**BY E-MAIL TO: rule-comments@sec.gov**

Ms. Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2008-036; Proposed Rule Change Relating to the  
Incorporated NYSE Rules**

Dear Ms. Harmon:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced rule filing (the “FINRA Harmonization Filing”) submitted to the Securities and Exchange Commission (“Commission”) by the Financial Industry Regulatory Authority (“FINRA”). As FINRA notes in its filing, the proposals included in the Harmonization Filing are intended to reduce regulatory duplication and relieve “Dual Member” firms (*i.e.*, firms that are members of both FINRA and the New York Stock Exchange LLC (“NYSE”)) of conflicting or unnecessary regulatory burdens in the interim period before a consolidated FINRA rulebook is completed.

The filing also notes that the proposal is an extension of the “Rules Harmonization” initiative in which SIFMA and its members were active participants. We view the Rules Harmonization project as a considerable success. In addition, we note that, prior to the formation of FINRA, NYSE filed a similar proposal, which the SEC published for public comment in July 2007 (the “NYSE Harmonization Filing”).<sup>2</sup>

SIFMA supports the rule changes included in the FINRA Harmonization Filing, and urges the Commission to approve them as expeditiously as possible. In order to fully achieve the

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. ‘

<sup>2</sup> Securities Exchange Act Release No. 56142 (July 26, 2007), 72 FR 42195. SIFMA also submitted a comment letter on the NYSE Harmonization Filing.

goal of harmonization, however, we believe it is essential that NYSE adopt corresponding amendments to its rulebook. To that end, we respectfully request that the Commission take steps to assure that, as soon as possible after the FINRA Harmonization Filing is approved, the NYSE propose conforming changes to its own rulebook (we believe that the 2007 NYSE Harmonization Filing can be modified for that purpose). We would also urge the Commission to approve any such conforming NYSE rule changes as expeditiously as possible. As we commented last year, approval of one Harmonization Filing without conforming changes from the other organization could result in three sets of rules applicable to Dual Members. This result could, of course, be entirely inconsistent with one of the key benefits in the creation of FINRA.<sup>3</sup>

### **Discussion**

SIFMA has strongly supported the creation of consolidated FINRA rulebook. In this regard, we note that FINRA has incorporated certain NYSE rules (the “Incorporated NYSE Rules”) into its rulebook, which rules are applicable only to Dual Member firms. At the same time, however, the Incorporated NYSE Rules also remain as part of the NYSE rulebook, applicable to NYSE member firms.

The FINRA Harmonization Filing is silent as to coordination between FINRA and NYSE with respect to the two Harmonization Filings; however, the 17d-2 agreement between FINRA and NYSE requires coordination when either organization proposes changes to the “Common Rules” (which includes the rules subject to the FINRA Harmonization Filing). In the absence of any such coordination, any amendments resulting from the FINRA Harmonization Filing could result in Dual Members being subject to three sets of rules: (1) the Incorporated NYSE Rules as amended by approval of the FINRA Harmonization Filing; (2) the legacy NASD rules, which are now part of the FINRA rulebook; and (3) NYSE rules. In our view, this would be an incongruous result.

Certainly, we understand that the creation of a consolidated rulebook is an ongoing process. Moreover, we applaud the FINRA staff for their continued diligence in the expeditious and sensible development of a FINRA rulebook, and we understand the magnitude of this undertaking and the considerable time pressures under which the FINRA staff is operating. With that said, however, we are concerned that the FINRA Harmonization Filing has the unintended potential to contravene the central purpose of SRO Consolidation by increasing regulatory duplication and inefficiency rather than reducing it.

### **Conclusion**

As noted above, we generally support the amendments proposed in the FINRA Harmonization Filing, and we believe the Commission should approve them. However, we urge the Commission to consider the impact that its approval of the amendments regarding

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<sup>3</sup> See Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Nancy M. Morris, Secretary, Commission (August 22, 2007).

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member firm regulation would have if consistent amendments are not also approved for NYSE. In this regard, we urge the Commission to take steps to assure that the FINRA Harmonization Filing is expeditiously followed up with a conforming NYSE filing.

Sincerely

A handwritten signature in black ink, appearing to read "Amal Aly", with a stylized flourish at the end.

Amal Aly  
Managing Director and Associate  
General Counsel

cc: Marc Menchel, Executive Vice President and General Counsel for Regulation  
Grace Vogel, Executive Vice President, Member Regulation