



August 22, 2007

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

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File No. SR-NYSE-2007-22; Proposed Rule Change Relating to the Harmonization of NYSE and NASD Regulatory Standards, the Updating of Certain NYSE Terminology, and the Reorganization and Clarification of Certain NYSE Rules in Connection With the Harmonization Process.

Dear Ms. Morris:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced rule filing (the “Harmonization Filing”) submitted to the Securities and Exchange Commission (“Commission”) by the New York Stock Exchange LLC (“NYSE”). As NYSE notes in its filing, the proposals included in the Harmonization Filing result from NYSE’s efforts to harmonize its rules with those of NASD, Inc. (“NASD”). SIFMA and its members are pleased to have been able to participate in the effort to coordinate a comprehensive review and comparison of the NASD and NYSE rules. As part of this “Rules Harmonization” project, industry representatives conducted a thorough and detailed review of the SROs’ rules governing matters of member firm regulation, identified differences between corresponding NYSE and NASD rules, and developed recommendations for harmonizing inconsistent rules. In July 2006, we provided our recommendations to NASD and NYSE, which subsequently indicated a substantial amount of agreement with our views on areas for potential harmonization. Indeed, many of our recommendations are included in the Harmonization Filing. We view the Rules Harmonization project as a successful example of the industry working together with the regulators to minimize unnecessary duplication and inconsistencies in rules while preserving investor protection and important regulatory interests.

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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. ‘

In the time since February 27, 2007, when NYSE submitted the Harmonization Filing to the Commission, the SROs have completed the consolidation of the member regulation operations of NASD and NYSE into a combined organization, the Financial Industry Regulatory Authority (“FINRA”), which now serves as the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public. SIFMA has been a strong supporter of this consolidation of SRO functions, and we were particularly pleased that, by submitting the proposed rule change, NYSE took specific steps before the consolidation was complete to implement the industry recommendations developed during the Rules Harmonization project.

Generally speaking, we support the rule changes included in the Harmonization Filing, and we believe the Commission should approve them. In addition, we urge the Commission to encourage FINRA to incorporate those aspects of the Harmonization Filing relating to member firm regulation into its own rulebook. However, if FINRA is not likely to agree to incorporate those changes into its own rulebook, then, as a last resort, the Commission should postpone its approval of those aspects of the Harmonization Filing. To do otherwise could result in three sets of rules applicable to firms that are members of both FINRA and NYSE (“Dual Members”), a result that would be entirely inconsistent with the central purpose of the creation of FINRA.<sup>2</sup>

## **Background**

SIFMA has strongly supported the creation of FINRA since it was announced last year. We wholeheartedly agree with the statements by FINRA CEO Mary L. Schapiro in recent testimony before the U.S. Senate that “[w]hen the consolidated SRO is in place and fully integrated, there will be a single set of rules adapted to firms of different sizes and business models. There will be one set of examiners and one enforcement staff. Duplicative regulation and overlapping jurisdiction will become a thing of the past. Inconsistent approaches and rule interpretations, and the potential for matters falling through the cracks between two separate regulators, will be historical footnotes.”<sup>3</sup>

We note that, in recent weeks, the Commission took important steps in allowing the SRO Consolidation to be completed. On July 26, 2007, the Commission approved a proposed rule change by NASD to incorporate certain NYSE rules (the “Common Rules”) to be applicable to Dual Members.<sup>4</sup> Also on July 26, 2007, the Commission approved a plan for the allocation of regulatory responsibilities between NASD and NYSE in connection with the creation of FINRA (the “17d-2 Plan”).<sup>5</sup> The 17d-2 Plan includes two important points regarding the allocation of

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<sup>2</sup> We also note that, on May 29, 2007, NYSE filed a proposed rule change regarding amendments to NYSE Rule 472. *See* File No. SR-NYSE-2007-49. This rule filing also includes amendments to harmonize NYSE and NASD rules regarding communications with the public, and we urge the Commission to similarly encourage FINRA to incorporate any changes to NYSE rules resulting from that filing into its own rulebook.

<sup>3</sup> Testimony of Mary L. Schapiro, Chairman and CEO, FINRA, before the Committee on Banking, Housing and Urban Affairs, United States Senate, Hearing on Consolidation of NASD and the Regulatory Functions of the NYSE: Working Towards Improved Regulation (May 17, 2007).

<sup>4</sup> *See* Securities Exchange Act Release No. 56147 (July 26, 2007).

<sup>5</sup> *See* Securities Exchange Act Release No. 56148 (July 26, 2007).

responsibility between FINRA and NYSE with respect to the Common Rules. First, as a general matter, the 17d-2 Plan provides that FINRA will assume examination, enforcement, and surveillance responsibilities relating to compliance by Dual Members with the Common Rules to the extent such responsibilities involve member firm regulation. The 17d-2 Plan provides further that NYSE retains responsibility with respect to the application of certain of the Common Rules to the extent they pertain to matters other than member firm regulation.

Second, the 17d-2 Plan includes a process for handling amendments to the Common Rules by either NYSE or FINRA. Specifically, the 17d-2 Plan provides that, whenever either NYSE or FINRA wishes to make a change to the substance of any Common Rule, it will, prior to filing a proposed rule change with the Commission, inform the other party of the intended change to determine whether the other party will propose a conforming change to its version of the Common Rule. Under the terms of the 17d-2 Plan, NYSE and FINRA have agreed that, if one of the parties does not agree to propose conforming proposals of the changes to the Common Rules proposed by the other, they will file an amendment to the 17d-2 Plan with the Commission to delete the rule in question from the list of Common Rules.

Notwithstanding this process, on July 26, 2007, the same day the Commission approved the 17d-2 Plan and NASD's incorporation of the Common Rules, NYSE filed an amendment to the Harmonization Filing, which had been pending for five months, and the Commission issued a notice of the proposed rule change the same day.<sup>6</sup> In doing so, the Commission has not indicated that NYSE's harmonization filing is subject to the amendment process under the 17d-2 Plan. Our understanding is that any amendments to the Common Rules approved through the Harmonization Filing would not become rules of FINRA unless FINRA affirmatively incorporated the amendments into its own rule books.<sup>7</sup>

Moreover, because the Harmonization Filing does not appear to be subject to the process established under the 17d-2 Plan, any amendments to NYSE Rules resulting from Commission approval of the Harmonization Filing would not carry over to the corresponding text of the Common Rules as incorporated by FINRA, which are part of the 17d-2 Plan. As a result, any amendments resulting from the Harmonization Filing could result in Dual Members being subject to three sets of rules: NYSE Rules, as amended by approval of the Harmonization Filing; the Common Rules, as incorporated by NASD into the FINRA rulebook; and NASD rules, which are now part of the FINRA rulebook. In our view, this would be an incongruous result. Certainly, we understand that the creation of a consolidated rulebook will not happen overnight, and we applaud FINRA for committing to completing a bulk of the rulebook consolidation over the next year. For now, however, we are concerned that the Harmonization Filing has the potential to contravene the central purpose of SRO Consolidation by inadvertently increasing regulatory duplication, inefficiency, and confusion rather than reducing it.

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<sup>6</sup> See Securities Exchange Act Release No. 56142 (July 26, 2007).

<sup>7</sup> See Securities Exchange Act Release No. 56147 at note 7, stating that, "[i]n the event the NYSE were to file a proposed rule change to amend an NYSE rule relating to member firm conduct following the closing of the [Consolidation] Transaction, NASD is not proposing to incorporate any such amendment into FINRA's rulebook, absent a separate rule filing by FINRA to adopt conforming changes."

**Conclusion**

As noted above, we generally support the amendments proposed by NYSE in the 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 member firm regulation would have if the same amendments are not also adopted by FINRA. In this regard, we urge the Commission to encourage FINRA to incorporate those aspects of the Harmonization Filing relating to member firm regulation into its own rulebook. As a last resort, we request that the Commission postpone approval of any amendments in the Harmonization Filing relating to the Common Rules if FINRA is not likely to agree to make a confirming rule filing of its own to incorporate those amendments into its rulebook.

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