

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56169; File No. SR-NYSE-2007-69)

July 30, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Information Memorandum That Reflects the Changes to Disciplinary Proceedings at NYSE Regulation, Inc. as a Result of the Regulatory Consolidation with the National Association of Securities Dealers, Inc.

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 July 26, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

This filing consists of an NYSE Regulation, Inc. (“NYSE Regulation”) Information Memo that reflects the changes to disciplinary proceedings at NYSE Regulation as a result of the regulatory consolidation with the National Association of Securities Dealers, Inc (“NASD”). The text of the proposed rule change, including the Information Memo, is available on the

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, 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 NYSE 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. The NYSE 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 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization, which will be known as the Financial Industry Regulatory Authority ("FINRA"). FINRA will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the "Transaction"). The purpose of this filing is to submit to the Commission an Information Memo concerning changes to disciplinary proceedings at NYSE Regulation because of the Transaction.

As explained in the Information Memo, FINRA will incorporate certain NYSE rules that pertain to member conduct, including rules relating to financial and operational standards of member organizations, books and records, and other non-trading functions of firms ("NYSE Member Firm Rules").<sup>5</sup> However, NASD will not be incorporating NYSE Rules 475, 476, and

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<sup>5</sup> NASD's incorporation of the NYSE Member Firm Rules is the subject of SR-NASD-2007-054. See Securities Exchange Act Release No. 56147 (July 26, 2007). Pursuant to Section 17(d) of the Act and Rule 17d-2 thereunder, FINRA and NYSE Regulation have agreed on a plan to allocate regulatory responsibility relating to the NYSE Member Firm

476A, which are the Exchange's rules that govern disciplinary procedures at the Exchange (the "NYSE Disciplinary Rules").

In particular, in connection with the Transaction, certain staff and functions of NYSE Regulation's Division of Enforcement will transfer to FINRA, which will assume responsibility for all investigations and disciplinary proceedings relating to violations of NYSE Member Firm Rules by NYSE member organizations and members. However, whether FINRA will conduct existing NYSE Regulation Enforcement actions pursuant to FINRA Code of Procedure or the NYSE Disciplinary Rules will depend on the status of the investigation as of the closing date.<sup>6</sup>

The Information Memo advises NYSE members and member organizations how NYSE Regulation disciplinary actions will be handled following the close of the Transaction. In particular, the Information Memo explains how the status of the investigation as of the closing date will govern which procedures will apply to a particular investigation, as follows:

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Rules to FINRA (the "17d-2 Agreement"). See Securities Exchange Act Release No. 56148 (July 26, 2007) (File No. 4-544).

<sup>6</sup> In connection with the Transaction, the Exchange has filed with the Commission a proposed rule filing to amend NYSE Rule 2 to require FINRA membership as a prerequisite to becoming an NYSE member organization. See SR-NYSE-2007-67. In addition, NASD has filed with the Commission amendments to its membership requirements to provide for a waive-in process to approve current NYSE member organizations that are not also NASD members ("NYSE-only member organizations") as FINRA members. See SR-NASD-2007-56. If these two filings are approved and NYSE-only member organizations are then approved as FINRA members, FINRA will be responsible for disciplinary proceedings described herein pursuant to the 17d-2 Agreement. In that interim period before the two filings are approved, FINRA will have authority to conduct disciplinary proceedings relating to the NYSE Member Firm Rules pursuant to a Regulatory Services Agreement among FINRA, NYSE Regulation, and the NYSE (the "RSA").

Prior to the date that an NYSE-only member organization is approved as a FINRA member, it will continue to be subject to NYSE Regulation disciplinary procedures. Accordingly, whether NYSE Regulation or FINRA procedures will govern disciplinary proceedings will be based on the date that the NYSE-only member organization is approved as a FINRA member, and not on the closing date.

If NYSE Regulation asserted jurisdiction over an individual or member organization pursuant to NYSE Rule 477 before the closing date of the Transaction, for those investigations relating to NYSE Member Firm Rules, depending on the date of termination from the industry, FINRA may have jurisdiction after the closing date of the Transaction to continue any investigation noticed in such letter and to bring a disciplinary proceeding at the conclusion of such investigation if it is deemed appropriate. If FINRA does not have jurisdiction, FINRA may continue to investigate such matters, but any resulting disciplinary proceedings will be subject to the NYSE Disciplinary Rules.<sup>7</sup>

The applicable disciplinary rules and forum for any disciplinary proceedings that may result from a current NYSE Regulation investigation will depend on whether NYSE Regulation has already filed a Charge Memorandum or Stipulation of Facts and Consent to Penalty (“Stipulation and Consent”) as of the closing date of the Transaction.

If NYSE Regulation has filed a Charge Memorandum or Stipulation and Consent as of the date of the closing, such matter (including any later appeals) will be adjudicated in accordance with the NYSE Disciplinary Rules and before the NYSE Hearing Board. Pursuant to the RSA, NYSE Regulation staff who will be transferring to FINRA may continue to participate in such proceedings.

If NYSE Regulation has not filed a Charge Memorandum or Stipulation and Consent as of the date of the closing in connection with an investigation relating to NYSE Member Firm Rules, the matter (including any later appeals) would be adjudicated by FINRA, pursuant to the FINRA (currently NASD) Code of Procedure, which includes FINRA’s Acceptance, Waiver, and Consent process.

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<sup>7</sup> FINRA will have the authority to conduct such disciplinary proceedings pursuant to the RSA.

NYSE Hearing Board decisions that have been, or could be, appealed under NYSE Rule 476 will be addressed pursuant to the current NYSE disciplinary rules. Matters initiated by FINRA pursuant to its Code of Procedure following the closing date, even if initiated as the result of an investigation that began at NYSE Regulation, would be appealed in accordance with FINRA's rules and procedures for such appeals.

The applicable rule and forum for summary proceedings that are currently adjudicated pursuant to NYSE Rule 475 will depend on whether NYSE Regulation has notified the person or entity in writing of the summary action before the date of closing. If the notification in writing has occurred before the date of closing, the matter will be adjudicated pursuant to NYSE Disciplinary Rules. If no such notification has occurred, the matter will be addressed by FINRA, pursuant to FINRA rules.

Minor violations of Member Firm Rules that are currently adjudicated under NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) (also known as summary fines) will be handled as follows: If a summary fine notice relating to any violation, including violations of Member Firm Rules, is issued before the date of closing, the matter will be adjudicated pursuant to NYSE rules. With respect to matters arising after the date of closing, NASD expects to file a rule change to modify its Minor Rule Violation Plan ("MRVP) to include the NYSE Member Firm Rules that, as of the date of such filing, are listed in NYSE Rule 476A. If the Commission approves that filing, after the closing, FINRA will be authorized to impose fines under FINRA's MRVP for minor violations by dual members of the NYSE Member Firm Rules enumerated in FINRA's MRVP.<sup>8</sup>

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<sup>8</sup> Pending approval of SR-NASD-2007-55, FINRA will have the authority to impose MRVP fines that relate to the NYSE Member Firm Rules pursuant to the RSA.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>9</sup> of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular, in that it is designed 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.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(1)<sup>13</sup> thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78a.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

<sup>13</sup> 17 CFR 240.19b-4(f)(1).

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-2007-69 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-69. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2007-69 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).