

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56654; File No. SR-NYSE-2007-67)

October 12, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.)

I. Introduction

On July 24, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reflect changes in the Exchange’s membership requirements as a result of the consolidation of the member firm regulatory functions of the National Association of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc. (“NYSE Regulation”), which resulted in a combined self-regulatory organization called Financial Industry Regulatory Authority, Inc. (“FINRA”).³ The proposed rule change was published for comment in the Federal Register on August 7, 2007.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

⁴ See Securities Exchange Act Release No. 56173 (July 31, 2007), 72 FR 44205 (“Notice”).

II. Description of the Proposal

In connection with the recently approved plan to consolidate the member regulation operations of NASD and the NYSE Regulation into a single organization (“Transaction”),⁵ NYSE proposes to require all organizations that currently are NYSE member organizations but are not NASD members (“NYSE-only member organizations”), or are organizations that propose to become NYSE member organizations, to also be members of FINRA. The Exchange notes that most NYSE member organizations are already also members of FINRA. According to the Exchange, there are approximately 95 NYSE member organizations that are not currently FINRA members and that will be required to become FINRA members in order to remain NYSE member organizations and to utilize a NYSE trading license.⁶ FINRA would become the designated examining authority (“DEA”) for all NYSE member organizations.⁷

The Exchange proposes to amend the definition of “member organization” in NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to keep NYSE Rule 308 (Acceptability

⁵ On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (“Release No. 34-56145”). The date of closing of the Transaction was July 30, 2007.

⁶ NYSE also has allowed an organization to be an NYSE “regulation only” member without purchasing a trading license, if the organization qualifies and subjects itself to NYSE regulatory jurisdiction. After the Transaction, NYSE will continue to provide this status to an organization that is or becomes a FINRA member and subjects itself to NYSE jurisdiction, even though the organization does not have a NYSE trading license.

⁷ Historically, NYSE was the DEA for virtually all of its member organizations. As part of the Transaction, it is contemplated that the Commission will name FINRA as the DEA for all the organizations for which NYSE was the DEA.

Proceedings) in order to retain for itself the discretion to deem an applicant unacceptable for NYSE membership.

NYSE-only member organizations would have a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed rule change or NASD's proposed rule change to amend its membership rules to permit eligible NYSE-only member organizations to become FINRA members through an expedited process.⁸

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of Section 6 of the Act.¹⁰ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that

⁸ NASD filed a companion proposal, which the Commission approved today, that specifies the terms on which eligible NYSE-only member organizations can become FINRA members on an expedited basis. Pursuant to that proposal, NASD would adopt Interpretive Material 1013-1 ("IM-1013-1"), which establishes a membership waive-in process for eligible NYSE-only member organizations, and Interpretive Material Section 4(b)(1) and 4(e) to Schedule A of the By-Laws, which exempts the applicants from the fee for each initial Form U-4 for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to IM-1013-1 and from the FINRA membership application fee. See Securities Exchange Act Release No. 56653 (SR-NASD-2007-056) ("Release No. 34-56653").

⁹ In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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.

The Commission notes that most NYSE member organizations are also members of FINRA. Thus, the proposed rule change will primarily affect approximately 95 NYSE-only member organizations, in addition to those organizations that propose to become NYSE member organizations.

The Commission believes that the proposed rule change would further the consolidation of the member firm regulation functions of NASD and NYSE Regulation, as approved by the Commission.¹² The Commission notes that the approximately 95 NYSE-only member organizations that must become FINRA members will be able to avail themselves of the expedited FINRA membership procedures and the waiver of certain FINRA registration and application fees.¹³ Further, the Commission believes that the 60-day grace period for eligible NYSE-only member organizations to become FINRA members is reasonable.

¹² See Release No. 34-56145, supra note 5.

¹³ See Release No. 34-56653, supra note 8.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-NYSE-2007-67), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

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Deputy Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).