SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68353; File No. SR-NYSE-2012-70)

December 4, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 472, Which Addresses Communications with the Public, Adopting New Rule Text to Conform to the Changes Adopted by the Financial Industry Regulatory Authority, Inc. for Research Analysts and Research Reports as Required by the Jumpstart our Business Startups Act

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on November 30, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 amend NYSE Rule 472, which addresses communications with the public, to adopt new rule text to conform to the changes adopted by the Financial Industry Regulatory Authority, Inc. ("FINRA") for research analysts and research reports as required by the Jumpstart our Business Startups Act (the "JOBS Act").[4] The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public

---

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 Pub. L. No. 112-106, 126 Stat. 306.

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 self-regulatory organization 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.

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 amend NYSE Rule 472, which addresses communications with the public, to adopt new rule text to conform to the changes adopted by FINRA for research analysts and research reports as required by the JOBS Act.[5]

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 Securities Exchange Act of 1934, as amended (the "Act"), NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory

[5] See Securities Exchange Act Release No. 68037 (October 11, 2012), 77 FR 63908 (October 17, 2012) (SR-FINRA-2012-045). See also FINRA Regulatory Notice 12-49.

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.[6]

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.[7]

Proposed Rule Change

The Exchange proposes to amend NYSE Rule 472 to adopt new rule text to conform to the changes adopted by FINRA for research analysts and research reports in NASD Rule 2711 and FINRA Incorporated NYSE Rule 472. FINRA amended these rules primarily to conform to the requirements of the JOBS Act. The proposed changes to NYSE Rule 472 are identical to the changes FINRA made to FINRA Incorporated NYSE Rule 472.

---

6 See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 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 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.

7 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.

The JOBS Act was signed into law on April 5, 2012. Among other things, the JOBS Act is intended to help facilitate capital formation for "emerging growth companies" ("EGCs") by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering ("IPO") of an EGC that:

- restricts, based on functional role, which associated persons of a broker, dealer or member of a national securities association, may arrange for communications between an analyst and a potential investor; or
- restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

Section 105(d) further prohibits the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- within any prescribed period of time following the IPO date of the EGC; or
- within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the EGC or its shareholders that restricts or prohibits the sale of securities held by the EGC or its shareholders after the IPO date.

These provisions became effective upon signature of the President of the United States on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions ("FAQs").[8] The Exchange is amending NYSE Rule 472 to conform with FINRA's amendments to the applicable provisions of NASD Rule 2711 and FINRA Incorporated NYSE Rule 472 to conform to the JOBS Act and the SEC staff's guidance with regard to the applicable JOBS Act provisions. The SEC staff guidance interprets the JOBS Act provisions as applicable to FINRA Incorporated NYSE Rule 472 to the same extent as NASD Rule 2711. As such, FINRA made corresponding amendments to Incorporated NYSE Rule 472. The proposed rule change corresponds identically to FINRA's amendments to FINRA Incorporated NYSE Rule 472.[9]

Arranging and Participating in Communications

NYSE Rule 472(b)(5) prohibits a research analyst from participating "in efforts to solicit investment banking business," including any "pitches" for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The FAQs interpret the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not "engage in otherwise prohibited conduct in such meetings," including "efforts to solicit investment banking business." The FAQs further explain that a research analyst that attends a pitch meeting "could, for example, introduce themselves,

---

8 These FAQs are available at http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.

9 See supra note 5.

outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the [EGC's] management." Accordingly, the proposed rule change creates an exception to NYSE Rule 472(b)(5) to reflect this guidance regarding the application of the JOBS Act.

The FAQs state that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the FAQs state that an investment banker could forward a list of clients to a research analyst that the analyst could, "at his or her own discretion and with appropriate controls, contact." The FAQs acknowledge that no self-regulatory organization, including the Exchange, has a rule directly prohibiting this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of NYSE Rule 472(b)(6)(ii).[10] Accordingly, this JOBS Act provision requires no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances with respect to the securities of an EGC any time after the IPO of an

---

[10] See supra note 8. In 2003 and 2004, the Commission, self-regulatory organizations, and other regulators instituted settled enforcement actions against 12 broker-dealers to address conflicts of interest between the firms' research and investment banking functions ("Global Settlement"). As the guidance point out, firms subject to the Global Settlement should also be mindful of the requirements of that court order as they remain in place.

EGC or prior to the expiration of any lock-up agreement. While the JOBS Act refers only to the "expiration" of a lock-up agreement, the FAQs note the Commission staff's belief that Congress intended for the JOBS Act provisions to apply equally to the period before a "waiver" or "termination" of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the proposed rule change amends NYSE Rule 472 to eliminate the following quiet periods with respect to an IPO of an EGC:

- NYSE Rule 472(f)(1), which imposes a 40-day quiet period after an IPO on a member organization that acts as a manager or co-manager of such IPO;
- NYSE Rule 472(f)(3), which imposes a 25-day quiet period after an IPO on a member organization that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and
- NYSE Rule 472(f)(4) with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver, or termination of a lock-up agreement or any other agreement that such member organization has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The FAQs note that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration, termination or waiver of a lock-up agreement. Accordingly, the FAQs note that NYSE Rule 472(f)(2), which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of NYSE Rule 472(f)(4) relating to quiet periods *after*

the expiration, termination or waiver of a lock-up agreement, remain fully in effect. Nonetheless, the FAQs express the SEC staff's belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. The Exchange agrees that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore has proposed to amend NYSE Rule 472(f) accordingly.

The Exchange also proposes to make a non-substantive change to correct the existing text of current NYSE Rule 472(f)(6), which would become NYSE Rule 472(f)(7) as a result of the proposed changes described above.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system.

The proposed changes to NYSE Rules 472(b)(5), (f)(1), (f)(3) and (f)(4) (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) conform those rules to statutory mandates. The proposed additional changes to NYSE Rules 472(f)(2) and (f)(4) further the policies underlying the statutory mandates by improving information flow to investors with respect to EGCs without

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

sacrificing the reliability of research reports, as the other objectivity safeguards in NYSE Rule 472 and SEC Regulation AC[13] are effective and will continue to apply. In addition, the Exchange believes that the proposed rule changes will remove impediments to and perfect the mechanisms of a free and open market and a national market system not only because it will conform Exchange rules to statutory mandates, but also because it will harmonize Exchange rules with identical FINRA rules.

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

No written comments were solicited or received 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 Act[14] and Rule 19b-4(f)(6) thereunder.[15] 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

---

13 17 CFR 242.500-05.

14 15 U.S.C. 78s(b)(3)(A)(iii).

15 17 CFR 240.19b-4(f)(6).

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b-4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] 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. The Commission hereby grants the request.[19] Waiving the 30-day operative delay will allow the Exchange to conform its rules to statutory mandates and harmonize Exchange rules with identical FINRA rules. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and, therefore, designates the proposal as operative 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 Act.

---

16 In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

17 17 CFR 240.19b-4(f)(6).

18 17 CFR 240.19b-4(f)(6)(iii).

19 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSE-2012-70 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-2012-70. 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 website (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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for

inspection and copying at the NYSE's principal office and on its Internet website 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-2012-70 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill
Deputy Secretary

[20] 17 CFR 200.30-3(a)(12).