

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58533; File No. SR-FINRA-2008-036)

September 12, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules

I. Introduction

On July 3, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend certain rules of the New York Stock Exchange LLC (“NYSE”) that relate to member firm conduct, and that have been incorporated into the FINRA rulebook (“Incorporated NYSE Rules”). The proposed rule change was published for comment in the Federal Register on July 14, 2008.<sup>3</sup> The Commission received one comment letter regarding the proposal.<sup>4</sup> This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Currently, the FINRA rulebook consists of rules of the National Association of Securities Dealers, Inc. (“NASD Rules”), and the Incorporated NYSE Rules. The Incorporated NYSE Rules apply only to firms that are members of FINRA and the NYSE (“Dual Members”). FINRA is currently developing a consolidated rulebook which will consist only of FINRA rules. In the interim period, FINRA proposes several amendments to the Incorporated NYSE Rules.

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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> See Securities Exchange Act Release No. 58103 (July 3, 2008), 73 FR 40403.

<sup>4</sup> See letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), to Florence E. Harmon, Acting Secretary, Commission, dated August 4, 2008 (“SIFMA letter”).

In some instances, FINRA proposes to harmonize inconsistencies between the Incorporated NYSE Rules and the NASD Rules. For example, FINRA proposes to delete the term “allied member” from the Incorporated NYSE Rules, as that concept has no direct FINRA analogue.<sup>5</sup> Similarly, FINRA proposes to re-position the Incorporated NYSE Rules governing the closing-out of securities contracts (“Buy-In Rules”), combining NYSE Rules 283, 285, 286, 287, 288, 289, and 290 in NYSE Rule 282. This proposed change would consolidate the NYSE Buy-In Rules into one rule, and would make NYSE Rule 282 more similar in format to the corresponding NASD rule.

In other instances, FINRA proposes to rescind provisions of the Incorporated NYSE Rules that are substantively addressed by NASD Rules. For example, FINRA proposes to rescind NYSE Rule 404, which regulates the carrying of accounts for customers by members, as that rule is duplicative of the FINRA Letter of Approval. Similarly, FINRA proposes to rescind NYSE Rule 446, which relates to business continuity and contingency plans, as that rule is nearly identical to NASD Rules 3510 and 3520.

FINRA also proposes to delete certain NYSE Rules that are outdated, and that have no equivalent NASD rules. For example, FINRA proposes to rescind NYSE Rule 311(h), which prescribes the number of partners a member organization must have in order for that member to conduct business. There is no comparable NASD rule, and, according to FINRA, this rule no longer applies to members’ current business models.

### III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.<sup>6</sup> That commenter supported the proposed rule change, and urged that the Commission approve it as

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<sup>5</sup> Where the use of the term “allied member” in the Incorporated NYSE Rules denotes an individual’s status as a “control person” of a member organization, FINRA proposes to substitute “allied member” with the newly-created category of “principal executive.”

<sup>6</sup> Supra note 4.

expeditiously as possible.<sup>7</sup> However, that commenter also requested that the Commission, upon approving the proposed rule change, take steps to ensure that NYSE adopts conforming changes to its rulebook.<sup>8</sup> According to the commenter, until the NYSE rulebook is conformed to the Incorporated NYSE Rules, Dual Members will be subject to the Incorporated NYSE Rules, the legacy NASD rules that currently form part of the FINRA rulebook, and the NYSE rules.<sup>9</sup> The commenter stated that this would be “entirely inconsistent with one of the key benefits in the creation of FINRA.”<sup>10</sup>

#### IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and 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 association<sup>11</sup> and, in particular, Section 15A(b)(6) of the Act,<sup>12</sup> which requires that FINRA have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA’s proposal provides greater harmonization between the Incorporated NYSE Rules and the NASD Rules. The amendments to the Incorporated NYSE Rules will reduce regulatory disparities, and will lessen the regulatory burden on Dual Members. Additionally, the concern

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<sup>7</sup> Id. at 1.

<sup>8</sup> Id. at 2.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

articulated by the commenter has been effectively addressed by a recent NYSE filing.<sup>13</sup> In SR-NYSE-2008-80, NYSE proposes to amend its rulebook to conform its rules to the Incorporated NYSE Rules.<sup>14</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2008-036) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> See SR-NYSE-2008-80 (filed September 5, 2008).

<sup>14</sup> Id.

<sup>15</sup> 17 CFR 200.30-3(a)(12).