

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59965; File No. SR-NYSE-2009-25)

May 21, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Changing Certain NYSE Rules and Rule Interpretations to Harmonize Them with Changes to Corresponding Rules Filed by the Financial Industry Regulatory Authority, Inc.

I. Introduction

On March 9, 2009, 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 make changes to certain NYSE rules and rule interpretations, to be effective retroactively to December 15, 2008, to harmonize them with changes to corresponding rules that were filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission or were effective upon filing with the Commission.³ On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change, which was withdrawn.⁴ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR-FINRA-2008-057).

⁴ On March 30, 2009, the Exchange withdrew Amendment No. 1.

March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The proposed rule change was published in the Federal Register on April 6, 2009.⁶ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On July 30, 2007, the National Association of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc., the regulatory subsidiary of the New York Stock Exchange (“NYSE”), consolidated their member firm regulation operations into FINRA. In connection with this consolidation, FINRA is in the process of establishing a consolidated FINRA rulebook (the “Consolidated FINRA Rulebook”)⁷ that will harmonize NASD rules and NYSE rules relating to member firm regulation.⁸ All of these rules will be identified as “FINRA Rules” when the rule consolidation process is completed.

⁵ Amendment No. 2 to SR-NYSE-2009-25 replaced the original filing in its entirety. References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. See telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc. and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, March 30, 2009.

⁶ See Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15563 (“Notice”).

⁷ The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE (“FINRA Incorporated NYSE Rules”) (together, referred to as the “Transitional Rulebook”), 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.

⁸ Pursuant to Rule 17d-2 under the Act, NYSE, NYSE and NASD entered into an agreement (“Rule 17d-2 Agreement”) to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for specified NYSE rules (the “Common Rules”). See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. See Securities Exchange Act Release No.

To reduce regulatory duplication, the Exchange proposes to harmonize several NYSE rules with certain FINRA rule changes by deleting NYSE rules and rule interpretations and replacing them with rules that are identical to, or substantially identical to, the FINRA Rules that were approved by, or were effective upon filing with, the Commission, subject to technical amendments to conform them to the Exchange. The Exchange also proposes to adopt the same rule numbers used in the Consolidated FINRA Rulebook to allow members and others to more readily identify those NYSE rules that have been harmonized with FINRA Rules. The Notice provides a more detailed description of the FINRA rule changes and the Exchange's proposed conforming rule changes.⁹

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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

56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR-NASD-2007-054). Paragraph 2(b) of the Rule 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

⁹ See Notice, supra note 6.

¹⁰ 15 U.S.C. 78f.

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

¹² 15 U.S.C. 78f(b)(5).

protect investors and the public interest.

The Exchange is deleting certain rules and rule interpretations pertaining to: (1) compensation or gratuities to employees of others; (2) business conduct, trading against firm recommendations, and private sales; (3) excessive trading by members, excessive trading in discretionary accounts, successive transactions by members, manipulative operations, reopening contracts, and loans for accounts of non-members; (4) disciplinary proceedings concerning conduct that is inconsistent with just and equitable principles of trade; (5) reporting of certain information concerning short sales and proprietary transactions; (6) reporting and certification of member or member organization's supervision and compliance efforts; (7) formation and approval or merger organizations; (8) reporting of short positions; (9) notification requirements for listed securities; and (10) disclosure and monitoring of non-managed fee based accounts.

In the place of the deleted rules and interpretations, the Exchange proposes to adopt rules that are identical to, or substantially identical to, FINRA Rules that were approved by the Commission or were effective upon filing with the Commission.¹³ In addition, NYSE is making non-substantive changes to the FINRA Rules that it is incorporating to reflect that they are NYSE rules and is deleting NYSE rules that have become outdated and are no longer needed. The Commission believes that the proposed rule change is appropriate and should reduce unnecessary regulatory duplication of Dual Members by harmonizing certain NYSE rules with FINRA Rules. With respect to the Exchange's proposal to delete NYSE Rule 350 (and accompanying interpretations) and to adopt NYSE Rule 3220 (relating to influencing or rewarding employees of others), the Commission notes that NYSE has stated that immediately upon Commission approval of new NYSE Rule 3220, it will issue an Information Memorandum

¹³ See supra note 3.

to its members and member organizations, including NYSE-only members and those members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of NYSE Rule 3220, and that such members and member organizations are required to regulate their conduct according to Rule 3220 and the interpretive guidance related to FINRA Rule 3220.¹⁴ Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSE-2009-25) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁴ See telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc. and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, May 21, 2009.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).