

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60457; File No. SR-NYSE-2009-76)

August 7, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Deleting NYSE Rule 409A and Adopting New Rule 2266 to Correspond with Rule Changes Recently Filed by the Financial Industry Regulatory Authority, Inc.

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 July 28, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) 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 delete NYSE Rule 409A and to adopt new Rule 2266 to correspond with rule changes recently filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission.⁴ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (order approving FINRA 2009-016).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete NYSE Rule 409A and to adopt new Rule 2266 to correspond with rule changes recently filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA’s predecessor, the National Association of Securities Dealers, Inc. (“NASD”), and NYSE Regulation, Inc. (“NYSE”) consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act, NYSE, NYSE and FINRA entered into an agreement (the “Agreement”) to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (“FINRA Incorporated NYSE Rules”).⁵ As part of its effort to reduce regulatory duplication and relieve firms that are members of both FINRA and the Exchange of conflicting or unnecessary regulatory burdens,

⁵ See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement) and Securities Exchange Act Release No. 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”). Paragraph 2(b) of the 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

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.⁶

Proposed Conforming Amendments to NYSE Rules

As discussed in more detail below, FINRA amended certain NASD and FINRA Incorporated NYSE Rules and adopted consolidated FINRA Rules to replace them. The NYSE hereby proposes to delete NYSE Rule 409A and to adopt new Rule 2266 to conform to the changes adopted by FINRA.⁷

In relevant part, FINRA adopted NASD Rule 2342 (SIPC Information) as consolidated FINRA Rule 2266.⁸ FINRA Rule 2266 requires all FINRA members, except for those members that are not Securities Investor Protection Corporation (“SIPC”) members or whose business consists exclusively of the sale of investments that are not subject to SIPC protection, to advise all new customers in writing at the time they open an account that they may obtain information about SIPC by contacting SIPC and to provide such customers with SIPC’s contact information. Such information must also be provided annually to all existing customers. Where both an

⁶ 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.

⁷ NYSE Amex LLC has submitted a companion rule filing to conform its corresponding NYSE Amex Equities Rules to the changes proposed in this filing. See SR-NYSE-Amex-2009-52, formally submitted July 28, 2009).

⁸ In its filing, FINRA also adopted NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as consolidated FINRA Rules 2080, 2310 and 4551, respectively. See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009). NYSE is not adopting these FINRA Rules.

introducing firm and a clearing firm service the same account, the firms may assign these requirements to one or the other firm.⁹

Because it is substantively similar to this new FINRA Rule, FINRA deleted FINRA Incorporated NYSE Rule 409A (SIPC Disclosures). In particular, FINRA Incorporated NYSE Rule 409A requires member organizations to advise each customer in writing, upon the opening of an account and annually thereafter, that they may obtain information about SIPC and to provide such customers with SIPC's contact information. Similar to FINRA Rule 2266, where a clearing agreement is in place, these requirements may be assigned to either the introducing or clearing firm. However, FINRA Incorporated NYSE Rule 409A does not contain the exclusions in FINRA Rule 2266.¹⁰

FINRA deleted FINRA Incorporated NYSE Rule 409A because it believes that FINRA [sic] Rule 2266, which includes the exclusionary provisions for non-SIPC members or members that sell exclusively non-SIPC securities, is the more appropriate rule for its members.¹¹

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rule 409A and to adopt proposed NYSE Rule 2266, which is substantially similar to the new FINRA Rule. As proposed, NYSE Rule 2266 adopts the same language as FINRA Rule 2266, except for substituting for or adding to, as needed, the term "member organization" for the term "member", and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 2266 Exchange

⁹ See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

¹⁰ See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

¹¹ See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

members and member organizations will be required to provide SIPC disclosures to all new customers upon opening an account and to existing customers on an annual basis.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,¹² in general, and further the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that they are 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 protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)¹⁴ of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rule, such changes are technical in nature and do not change the substance of the proposed NYSE Rule.

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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1).

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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 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.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ 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 believes waiving the 30-day operative delay is consistent with the

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6). 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. Acceleration of the operative date will allow the immediate change of the NYSE's rule to make it consistent with the FINRA rule, thereby making compliance for dual members less burdensome. For these reasons, the Commission designates the proposal to be effective and operative upon filing.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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-2009-76 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-2009-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁰ For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of 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-2009-76 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).