

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60512; File No. SR-NYSE-2009-75)

August 17, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by New York Stock Exchange LLC Adopting NYSE Rule 406 as New Rule 3250 to Correspond with a Rule Change Recently Filed by the Financial Industry Regulatory Authority, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> 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 substantially prepared by the self-regulatory organization. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 adopt NYSE Rule 406 (Designation of Accounts) as new Rule 3250 to correspond with a rule change recently filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission.<sup>5</sup> The text of

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009-017).

the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://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 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 purpose of the proposed rule change is to adopt NYSE Rule 406 (Designation of Accounts) as new Rule 3250 to correspond with a rule change recently filed by FINRA and approved by the Commission.<sup>6</sup>

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,<sup>7</sup> 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

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<sup>6</sup> Id.

<sup>7</sup> 17 CFR 240.17d-2.

(“FINRA Incorporated NYSE Rules”).<sup>8</sup> 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, 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.<sup>9</sup>

#### Proposed Conforming Amendment to NYSE Rules

As discussed in more detail below, FINRA adopted FINRA Incorporated NYSE Rule 406 (Designation of Accounts) as consolidated FINRA Rule 3250, subject to some minor technical changes. The NYSE hereby proposes to adopt NYSE Rule 406 as new Rule 3250 to conform to the rule change adopted by FINRA.<sup>10</sup>

Specifically, FINRA Incorporated NYSE Rule 406 provides that no NYSE member organization shall carry an account on its books in the name of a person other than that of the customer. However, an account may be designated by a number or symbol, provided the member organization has a written statement of ownership signed

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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-2009-51, formally submitted July 28, 2009.

by the customer. This Rule has been used to address, inter alia, sales practice abuses, including commingling of funds, failure to disclose ownership interests in accounts and unauthorized trading.<sup>11</sup>

FINRA adopted FINRA Incorporated NYSE Rule 406 as consolidated FINRA Rule 3250 because it believes the Rule is an important enforcement tool and should be applied to all FINRA members and not just Dual Members. In addition, the Rule provides customers and their accounts with a level of anonymity that may be useful while still permitting identification to the member organization carrying the account as well as regulators. Upon adoption of Rule 3250, FINRA made minor technical changes to apply the Rule to all FINRA members, replacing the terms “member organization” or “organization” with the term “member.”<sup>12</sup>

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to adopt NYSE Rule 406 as new Rule 3250, which is substantially similar to the new FINRA Rule. As proposed, NYSE Rule 3250 adopts the same language as FINRA Rule 3250, except for retaining or adding, as needed, the term “member organization” and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 3250 Exchange member organizations will be required to carry customer accounts in the name of the customer, except that an account may be designated by a number or symbol, as long as the member maintains documentation identifying the customer.<sup>13</sup>

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<sup>11</sup> See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009).

<sup>12</sup> Id.

<sup>13</sup> Id. As noted by FINRA, member organizations are subject to additional requirements regarding customer accounts under the Act. See, e.g., 17 CFR

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is 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.

### 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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection

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240.17a-3(a)(9) (requiring records indicating the name and address of the beneficial owner of cash and margin customer accounts).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rule with the approved FINRA Rule, and will ensure the elimination of any potential regulatory gap and that the NYSE Rules maintain their status as Common Rules under the Agreement. Therefore, the Commission designates the proposal operative upon filing.<sup>18</sup>

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:

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 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 this requirement.

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-75 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-2009-75. 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 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange and on its Web site at [www.nyse.com](http://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-2009-75 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.<sup>19</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).