

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61179; File No. SR-NYSEAmex-2009-89)

December 16, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rules 312- and 321- NYSE Amex Equities and Adopt New Rules 2262- and 2269- NYSE Amex Equities Filed by the Financial Industry Regulatory Authority, Inc.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 14, 2009, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 amend Rules 312- and 321- NYSE Amex Equities and adopt new Rules 2262- and 2269- NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Securities and Exchange Commission (the “Commission”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 changes is to amend Rules 312 – NYSE Amex Equities (Changes Within Member Organizations) and 321 – NYSE Amex Equities (Formation or Acquisition of Subsidiaries) and adopt new Rules 2262 – NYSE Amex Equities (Disclosure of Control Relationship with Issuer) and 2269 – NYSE Amex Equities (Disclosure of Participation or Interest in Primary or Secondary Distribution) to correspond with rule changes 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 Securities Exchange Act of 1934, as amended (the “Act”), the New York Stock Exchange LLC (“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”). The Exchange became a party to the Agreement effective December 15, 2008.<sup>4</sup>

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex 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>5</sup>

#### Proposed Conforming Amendments to NYSE Rules

FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.<sup>6</sup>

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<sup>4</sup> 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 Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

<sup>5</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, 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>6</sup> In its filing, FINRA also adopted NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as consolidated FINRA Rule 5260. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009). NYSE Amex is not adopting this FINRA Rule as it is not applicable to trading on the Exchange.

Because the protection provided by the new FINRA Rules, as well as existing or proposed FINRA Rules and SEC Rules,<sup>7</sup> is generally broader than that provided by FINRA Incorporated NYSE Rules 312(f) and 321.24, FINRA deleted those rules. Specifically, FINRA noted that, unlike FINRA Incorporated NYSE Rule 312(f)(2), consolidated FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member or member organization makes a recommendation on a security to a customer. In addition, FINRA noted that the requirements of FINRA Incorporated NYSE Rules 312(f)(1) and (3) are sufficiently addressed by consolidated FINRA Rules 2262 and 2269 and other rules. FINRA also noted that, unlike FINRA Incorporated NYSE Rule 321.24, consolidated FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued by a subsidiary of the member organization.<sup>8</sup>

To harmonize the NYSE Amex Equities Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete Rules 312(f)- and 321.24- NYSE Amex Equities and replace them with proposed Rules 2262- and 2269- NYSE Amex Equities, which are substantially similar to the new FINRA Rules.<sup>9</sup> As proposed, Rules 2262- and 2269- NYSE Amex Equities adopt the same language as FINRA Rules 2262 and 2269,

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<sup>7</sup> According to FINRA, the requirements of consolidated FINRA Rules 2262 and 2269 are almost identical to SEA Rules 15c1-5 and 15c1-6, respectively. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (footnotes 4-6).

<sup>8</sup> See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009).

<sup>9</sup> NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-2009-125.

except for substituting for or adding to, as needed, the term “member organization” for the term “member”, and making corresponding technical changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>10</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>11</sup> 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)<sup>12</sup> 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 Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

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<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

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.<sup>17</sup>

The proposed rule change is based upon the rules of another self-regulatory organization, and as such is not in any way novel or controversial. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will bring uniformity to the Exchange's and FINRA's rules. Accordingly, the Commission hereby grants the Exchange's request and 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:

##### Electronic comments:

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<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 met this requirement.

<sup>18</sup> For the 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).

- 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-NYSEAmex-2009-89 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-NYSEAmex-2009-89. 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,<sup>19</sup> 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet 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

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<sup>19</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.



only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-89 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>20</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).