

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61744; File No. SR-NYSEAMEX-2010-26)

March 19, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Deleting Rule 446 – NYSE Amex Equities and Adopting new Rule 4370 – NYSE Amex Equities to Correspond with Rule Changes 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 March 11, 2010, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 Rule 446 – NYSE Amex Equities and adopt new Rule 4370 – NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission.<sup>4</sup> 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).

---

<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.

<sup>4</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR-FINRA-2009-036).

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 delete Rule 446 – NYSE Amex Equities (Business Continuity and Contingency Plans) and adopt new Rule 4370 – NYSE Amex Equities (Business Continuity Plans and Emergency Contact Information) 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 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>5</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>6</sup>

#### Proposed Conforming Amendments to NYSE Amex Equities Rules

In 2008, FINRA deleted FINRA Incorporated NYSE Rule 446 (Business Continuity and Contingency Plans) as substantively duplicative of NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).<sup>7</sup>

Correspondingly, the Exchange amended Rule 446 – NYSE Amex Equities (Business Continuity and Contingency Plans) to remove the existing text and incorporate NASD

---

<sup>5</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>6</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>7</sup> See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving SR-FINRA-2008-036).

Rules 3510 and 3520 by reference.<sup>8</sup> Subsequently, FINRA adopted, subject to certain amendments, NASD Rules 3510 and 3520 as consolidated FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).<sup>9</sup>

In order to harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete Rule 446 – NYSE Amex Equities and replace it with proposed Rule 4370 – NYSE Amex Equities, which is substantially similar to the new FINRA Rule.<sup>10</sup> As proposed, Rule 4370 – NYSE Amex Equities adopts the same language as FINRA Rule 4370, except for substituting for or adding to, as needed, the term “member organization” for the term “member”, and making corresponding technical changes that reflect the difference between NYSE Amex’s and FINRA’s membership structures. In addition, in paragraph (f)(2) to proposed Rule 4370 – NYSE Amex Equities, the Exchange added a cross-reference to Rule 416A – NYSE Amex Equities to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for emergency personnel in accordance with NYSE Amex Equities Rules.

Finally, in order to ensure that both proposed Rule 4370 – NYSE Amex Equities and FINRA Rule 4370 are fully harmonized, the Exchange also proposes to add Supplementary Material .01 to Rule 4370 – NYSE Amex Equities to provide that, for the

---

<sup>8</sup> See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (order approving SR-NYSEALTR-2008-10).

<sup>9</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009).

<sup>10</sup> New York Stock Exchange LLC has submitted a companion rule filing amending its rules in accordance with FINRA’s rule changes. See SR-NYSE-2010-23.

purposes of the rule, the term “associated person” shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

In addition, the Exchange respectfully requests that the effective date for the proposed rule changes be retroactive to December 14, 2009, the same effective date for FINRA’s rule changes.<sup>11</sup> Approval retroactively effective to December 14, 2009, would ensure that the proposed rule changes are operative and effective at the same time as FINRA’s rule changes, that there are no regulatory gaps between the FINRA and NYSE Amex Equities Rules and that, as applicable, the NYSE Amex Equities Rules maintain their status as Common Rules under the 17d-2 Agreement.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>13</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>14</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 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

---

<sup>11</sup> See FINRA Regulatory Notice 09-60 (October 15, 2009).

<sup>12</sup> As provided in paragraph 2(b) of the 17d-2 Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-2010-26 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-2010-26. 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>15</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 Web site viewing and printing 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'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

---

<sup>15</sup> The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/>.

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-NYSEAMEX -2010-26 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>16</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>16</sup> 17 CFR 200.30-3(a)(12).