

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59656; File No. SR-NYSEALTR-2009-26)

March 30, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Alternext US LLC, as modified by Amendment No. 1, Changing Certain NYSE Amex Equities Rules to Conform Them with Changes to Corresponding Rules Submitted in a Companion Filing by the New York Stock Exchange LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 9, 2009, NYSE Alternext US LLC (n/k/a NYSE Amex LLC) (“Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, formerly the American Stock Exchange LLC and NYSE Alternext US LLC<sup>4</sup>, proposes changes to certain NYSE Amex Equities Rules, retroactively effective to December 15, 2008, to conform them with changes to corresponding rules submitted in a companion filing by the New York Stock Exchange LLC (“NYSE”).<sup>5</sup> The text of the proposed

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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> Amendment No. 1 to SR-NYSEALTR-2009-26 replaces the original filing in its entirety.

<sup>4</sup> On March 3, 2009, the Exchange formally submitted a filing with the Commission changing its name to NYSE Amex LLC. See SR-NYSEALTR-2009-24.

<sup>5</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to change certain NYSE Amex Equities Rules to conform them with amendments to corresponding NYSE Rules submitted in a companion filing by the NYSE.

Background

As described more fully in a rule filing<sup>6</sup>, NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Amex US LLC, and continues to operate as a national securities

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<sup>6</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving the Merger).

exchange registered under Section 6 of the Act.<sup>7</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Amex Trading Systems”) are operated by the NYSE on behalf of the Exchange.<sup>8</sup>

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.<sup>9</sup> The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approving the Equities Relocation).

<sup>9</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11) (adopting amendments to Rule 62 - NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

## Proposed Conforming Amendments to NYSE Amex Equities Rules

As noted above, the Exchange proposes to change certain NYSE Amex Equities Rules to conform them with changes to corresponding NYSE Rules submitted in a companion filing by the NYSE.<sup>10</sup> The NYSE is filing the proposed rule changes, retroactively effective to December 15, 2008, to harmonize its Rules with changes to corresponding rules recently filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission or submitted for immediate effectiveness.<sup>11</sup> Unless specifically noted, and subject to such technical changes as are necessary to apply the Rules to the Exchange, NYSE Amex is proposing to adopt the NYSE’s proposed rule changes in the form that they have been approved for filing by the Commission. The NYSE’s proposed rule changes and the Exchange’s proposed conforming rule changes are described below.<sup>12</sup>

The Exchange further proposes that these rule changes be retroactively effective to December 15, 2008, the same as the effective date of the NYSE’s proposed rule changes and FINRA’s rule changes on which this filing and the NYSE’s filing are based.

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<sup>10</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>11</sup> 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). See also FINRA Regulatory Notice 08-57, October 16, 2008. FINRA filed the rule changes as part of its effort to develop a new consolidated rulebook for its members (the “Consolidated FINRA Rulebook”).

<sup>12</sup> In its filing, the NYSE proposes to change certain NYSE Rule Interpretations. The Exchange has not adopted a corresponding version of the NYSE Rule Interpretations and so those proposed rule changes are not applicable to the Exchange and are not included in this filing.

FINRA Rule Filing SR-FINRA-2008-027<sup>13</sup>

In this filing, FINRA adopted NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA Rules 3220 and 2070, respectively. FINRA Rule 3220 prohibits members or associated persons from giving gifts or gratuities in excess of \$100 per year to an agent or employee of another person where it relates to the business of the employer of the recipient. FINRA Rule 2070 addresses conflicts of interest involving FINRA employees.

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 407(a) and 407.10 (Transactions – Employees of Members, Member Organizations and the Exchange) and 350 (Compensation or Gratuities to Employees of Others), and Rule Interpretations 350/01 (Application) and /02 (Conflicts of Interest).<sup>14</sup> FINRA also deleted FINRA Incorporated NYSE Rule Interpretation 350/03 (Entertainment), which deals with business entertainment expenses, since it is addressed in a separate rule filing.<sup>15</sup>

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<sup>13</sup> See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008).

<sup>14</sup> FINRA also noted that certain provisions of FINRA Incorporated NYSE Rules 350 and 350.10 and Rule Interpretation 350/02 related to operations/Floor employees of the NYSE are not applicable to FINRA and could be deleted. See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008). NYSE Amex believes that the substance of these provisions is adequately addressed in existing NYSE Amex Equities Rules and the proposed NYSE Amex Equities Rules 2070 and 3220.

<sup>15</sup> See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (SR-NASD-2006-44), as subsequently amended, January 2, 2008. The NYSE has proposed the adoption of a new NYSE Rule 350A that is substantively duplicative of the rule proposed in SR-NASD-2006-044. See Securities Exchange Act Release No. 55766 (May 15, 2007), 72 FR 28534 (May 21, 2007) (SR-NYSE-2006-06). These filings have not been approved by the Commission as of the date of this filing. Upon approval, the Exchange will adopt a corresponding NYSE Amex Equities Rule. The Commission notes that NYSE Amex must file a proposed rule change under Section 19(b) of the Act to adopt such corresponding NYSE Amex Equities Rule.

Accordingly, to harmonize the NYSE Rules with the approved FINRA rule changes, the NYSE proposes to (i) delete NYSE Rule 350 and Rule Interpretations 350/01 - /03, and (ii) adopt proposed NYSE Rules 2070 and 3220, which are nearly identical to FINRA Rules 2070 and 3220, to replace the deleted NYSE Rules. The NYSE believes that proposed NYSE Rules 2070 and 3220, together with other existing and/or proposed NYSE Rules, address the specific provisions of NYSE Rule 350 and the related Rule Interpretations.<sup>16</sup>

Specifically, NYSE Rule 350(a) addresses the giving of gifts or gratuities by members, member organizations and their employees to other members, member organizations, their employees or the employees of non-members engaged in certain businesses. NYSE Rules 350(a) and (b) address the employment or compensation of others by members, member organizations and their employees, including Floor-based employees of other members or member organizations. Under NYSE Rule 350(b), payment in excess of \$200 for employment or compensation of a Floor employee of another member or member organization requires the employee to become registered with such member or member organization.

The NYSE believes that proposed new NYSE Rule 3220 replaces NYSE Rule 350(a) because it addresses the giving of gifts or gratuities to, and the employment or compensation for services of, the employees of others, both members and non-members. Proposed NYSE Rule 3220(a) harmonizes with FINRA Rule 3220(a) because it prohibits the giving of gifts or gratuities in excess of \$100 per year to “any person, principal, proprietor, employee, agent or

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<sup>16</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

representative of another person” where that gift is related to the business of the recipient’s employer.<sup>17</sup>

Proposed NYSE Rule 3220(b) replaces NYSE Rule 350(b) because it addresses situations requiring dual employment and prior written consent when compensation provided to another employee exceeds a specified amount. NYSE Rule 350(b) requires dual employment for any payments over \$200 to Floor employees whereas proposed NYSE Rule 3220(b) requires dual employment for any payment made to any employee for employment or services over the \$100 limit prescribed by NYSE Rule 3220(a), including Floor employees of a member organization.<sup>18</sup>

Because under proposed NYSE Rule 3220(a) any employee, including Floor employees, receiving more than \$100 for services from another member organization must be dually employed with that member organization, the requirement under NYSE Rule 350(b) that a Floor employee receiving more than \$200 in compensation be dually registered is no longer necessary. Under NYSE Rules 35 and 35.50, which require that all member and member organization Floor employees must be registered with the NYSE on Form U-4, any Floor employee that is dually employed must be registered with each member organization for whom he or she works. Accordingly, because the new dual employment requirement under proposed NYSE Rule 3220(b) triggers the NYSE Rule 35 dual registration requirements, it is not necessary to specify dual registration in proposed NYSE Rule 3220. Upon adoption of NYSE Rule 3220 the NYSE and the Exchange intend to issue guidance to their members and member organizations reminding them that any person who is dually employed by two or more members or member

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<sup>17</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>18</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

organizations must be registered with each such member or member organization pursuant to NSYE and NYSE Amex Equities Rule 35.<sup>19</sup>

NYSE Rules 350(a) and 350.10 also specifically address, inter alia, the giving of gifts or gratuities to, or the employment or compensation of, employees of the NYSE by members, member organizations and their employees. In particular, NYSE Rule 350.10 specifies, inter alia, the procedures for seeking NYSE's consent for the employment or compensation of NYSE employees and describes the types of dual-employment arrangements generally acceptable to the NYSE and those that are not acceptable.

The NYSE believes that proposed NYSE Rules 3220 and 2070 specifically address the provisions of NYSE Rule 350(a) and 350.10 dealing expressly with NYSE employees. To begin with, proposed NYSE Rule 3220 concerns the giving of gifts or gratuities to, or the employment or compensation of, any employee of another, which would include employees of the NYSE. In addition, proposed NYSE Rule 2070(c) specifically provides that, notwithstanding the more general prescriptions of NYSE Rule 3220(a), members and member organizations are prohibited from giving anything of value to an NYSE employee responsible for any regulatory matter involving such member or member organization. The NYSE did not include the standards or procedures for dual-employment arrangements for its employees contained in NYSE Rule 350.10 into the proposed NYSE Rules 2070 and 3220 because those rules bind only NYSE members and member organizations and not its employees. The NYSE does believe, however, that proposed NYSE Rules 2070 and 3220 governing member conduct, together with the NYSE's internal policies and procedures governing the acceptance of gifts and gratuities and

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<sup>19</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.



dual employment arrangements by its employees, provide sufficient protection against any improper relationships between its employees and its members.<sup>20</sup>

In its filing, the NYSE also noted that NYSE Rule Interpretations 350/01 - /03 are addressed by proposed NYSE Rules 2010, 2020 and 3220, as well as existing NYSE Rules 476(a)(1) and (a)(5).<sup>21</sup> The NYSE also noted that, upon adoption of new NYSE Rule 3220, it would issue an Information Memorandum to its members and member organizations, including dual FINRA and NYSE members and members organizations as well as NYSE-only members and member organizations, informing them of their obligations under the new Rule incorporating the FINRA interpretations under its Rule 3220 concerning business entertainment expenses. The Exchange would issue joint guidance to its members and member organizations, including both dual FINRA and NYSE Amex members and member organizations as well as NYSE Amex-only members and member organizations, concurrently with the NYSE.<sup>22</sup>

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<sup>20</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. The Exchange, which is the NYSE's corporate affiliate, has the same policies and procedures governing the acceptance of gifts and gratuities and dual employment arrangements by its employees.

<sup>21</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. In its filing, the NYSE proposes to replace current NYSE Rule 401(a), concerning good business practices, with proposed NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, approved by the Commission. The Exchange proposes, *infra*, the adoption of NYSE Amex Equities Rules 2010 and 2020 in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange.

<sup>22</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. Specifically, FINRA's interpretative guidance concerning business entertainment expenses includes a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretative letter and other interpretive guidance concerning business entertainment expenses are currently available at FINRA's web site at [www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm](http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm).

As proposed, new NYSE Rules 2070 and 3220 are virtually identical to FINRA Rules 2070 and 3220, previously approved by the Commission. With respect to proposed NYSE Rule 2070, the NYSE proposes minor changes to the approved FINRA version of that Rule to conform it to the Exchange, including changing the title of the Rule to “Transactions Involving Exchange Employees,” adding the term “member organization,” and adding language that requires member organizations to provide statements to the NYSE, rather than FINRA, for accounts held by NYSE employees. In addition, the NYSE proposes to add language to NYSE 2070(c) to include listing applications and delisting proceedings, and to remove the reference to dispute-resolution proceedings.<sup>23</sup> With respect to proposed NYSE Rule 3220, to conform that Rule to NYSE definitions, the NYSE proposes adding the term “member organization.”<sup>24</sup>

Finally, although FINRA has deleted language from FINRA Incorporated NYSE Rule 407, because the NYSE uses its corresponding NYSE Rule to, inter alia, monitor accounts held by NYSE employees, the NYSE will retain NYSE Rule 407 without change.<sup>25</sup>

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<sup>23</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. Unlike FINRA, both the NYSE and the Exchange still review listing applications and conduct delisting proceedings and believe it is appropriate to include these matters in proposed NYSE and NYSE Amex Equities Rule 2070(c). In addition, since neither the NYSE nor the Exchange no longer engages in dispute-resolution proceedings (i.e. arbitrations), they do not need such a designation in either proposed NYSE or NYSE Amex Equities Rule 2070.

<sup>24</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>25</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. Even though FINRA amended FINRA Incorporated NYSE Rule 407 when it adopted FINRA Rule 2070, those two rules are not inconsistent. NYSE Rule 407(a) provides, inter alia, that a member or member organization must obtain prior written consent before opening an account or executing a trade for an NYSE employee. FINRA Rule 2070(a) and proposed NYSE Rule 2070(a) simply require that, once a member or member organization has actual notice of an account held by a FINRA or NYSE employee, it must provide duplicate account statements to the NYSE. In addition, NYSE Rule 407.10 prescribes procedures for how NYSE employees may open accounts that are not addressed by FINRA Rule 2070 or proposed NYSE Rule 2070. Thus, the NYSE can retain NYSE Rule 407 in its original form as well as adopt NYSE Rule 2070 without any

The Exchange proposes to correspondingly delete Rule 350 – NYSE Amex Equities and adopt Rules 2070- and 3220- NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange. Similarly, the Exchange will retain Rule 407 – NYSE Amex Equities without change to monitor accounts held by Exchange employees.

FINRA Rule Filing SR-FINRA-2008-028<sup>26</sup>

Here, FINRA adopted, inter alia, NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) as FINRA Rules 2010 and 2020, respectively. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. This Rule is used to protect market participants from dishonest and unfair practices even where those practices do not violate a specific law, rule or regulation. FINRA Rule 2020 is a general antifraud provision that is used to address a range of conduct, including market manipulation, excessive trading, insider trading and fraudulent misrepresentation. In a separate filing, FINRA also adopted FINRA Rule 6140 (Other Trading Practices), which replaces NASD Rule 5120 and governs a number of prohibited trading practices, including manipulation and disseminating false and misleading information about a security.<sup>27</sup>

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 401(a) (Business Conduct) and

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regulatory conflict for its members and member organizations. Similarly, the Exchange will retain Rule 407-NYSE Amex Equities.

<sup>26</sup> See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

<sup>27</sup> FINRA Rule 6140 was adopted in SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

435(1), (3) and (4) (Miscellaneous Prohibitions) and Rule Interpretation 401/01 (Trading Against Firm Recommendations).<sup>28</sup> In addition, FINRA deleted NYSE Rule Interpretation 401/02 (Private Sales), which requires members to monitor personnel that market securities through private offerings, for being substantively duplicative of NYSE Rules 407(b) and 407.11.<sup>29</sup> FINRA also deleted FINRA Incorporated NYSE Rule 435 provisions (6) and (7) as being obsolete and/or substantively duplicative of Federal Reserve Board Regulation T.

Accordingly, to harmonize NYSE Rules with the approved FINRA Rules, the NYSE similarly proposes to delete (i) NYSE Rule 401(a) and Rule Interpretations 401/01 and /02, (ii) NYSE Rule 476(a)(6)<sup>30</sup>, and (iii) NYSE Rules 435(1), (3), (4), (6), and (7). To replace NYSE Rules 401(a) and 476(a)(6) and Rule Interpretation 401/01, the NYSE proposes to adopt NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, except for adding the term “member organization.” To replace NYSE Rules 435(1), (3), and (4), the NYSE proposes to adopt NYSE Rule 6140, which is substantially identical to FINRA Rule 6140, except for adding the term “member organization.” For the same reasons proposed by FINRA, the NYSE proposes deleting NYSE Rule Interpretation 401/02 as being substantively duplicative

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<sup>28</sup> In addition to being covered more generally by FINRA Rules 2010 and 2020, provisions (1), (3) and (4) of FINRA Incorporated NYSE Rule 435 are also substantially the same as FINRA Rule 6140. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

<sup>29</sup> FINRA has stated that these particular NASD and NYSE Rules are proposed for inclusion in the so-called “supervision rules” that are to be adopted at some later date as part of the Consolidated FINRA Rulebook. See FINRA Regulatory Notice 08-24.

<sup>30</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. Although it is not addressed by FINRA in its filing because it is not a FINRA Incorporated NYSE Rule subject to FINRA’s regulatory responsibility under the Agreement, NYSE Rule 476(a)(6) prescribes that NYSE members and member organizations and their employees may not engage in conduct “inconsistent with just and equitable principles of trade[.]” The NYSE thus includes this provision for deletion since “just and equitable principles of trade” are addressed in proposed NYSE Rule 2010. The Exchange correspondingly proposes to delete Non-NYSE Amex Equities Rule 476(a)(6).

of NYSE Rules 407(b) and 407.11, and deleting NYSE Rules 435(6) and (7) as being obsolete and/or substantively duplicative of Reserve Board Regulation T.<sup>31</sup>

The Exchange proposes to correspondingly delete Rules 401(a)- and 435(1), (3), (4), (6) and (7)- NYSE Amex Equities and Non-NYSE Amex Equities Rule 476(a)(6).<sup>32</sup> The Exchange further proposes to adopt Rules 2010-, 2020- and 6140- NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange.

FINRA Rule Filing SR-FINRA-2008-029<sup>33</sup>

In this filing, FINRA deleted, inter alia, FINRA Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs – Disclosure and Monitoring), 440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction – Failure to Cooperate) as being duplicative of other NASD, FINRA or SEC rules or regulations or as being specific to the NYSE marketplace.

For the same reasons set forth in the approved FINRA filing, the NYSE proposes to delete NYSE Rule 405A. As FINRA noted, the prescriptions of Rule 405A are addressed under the Investment Advisers Act of 1940 and also, to the extent fee-based programs continue to exist in brokerage accounts, in NASD Notice to Members 03-68, which applies NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) to such accounts.<sup>34</sup> The NYSE is

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<sup>31</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>32</sup> For a definition of “Non-NYSE Amex Equities Rules”, see legacy Amex Rule 0 and Rule 0 – NYSE Amex Equities.

<sup>33</sup> See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

<sup>34</sup> NASD Rule 2110 was adopted by FINRA as FINRA Rule 2010 in SR-FINRA-2008-028. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

proposing to adopt NYSE Rule 2010, which is substantially the same as FINRA 2010, and so, to the extent fee-based programs continue to exist in brokerage accounts they would be addressed under the proposed Rule.<sup>35</sup>

With respect to NYSE Rules 440F and 440G, as FINRA noted these Rules are NYSE specific – they require member organizations to file with the NYSE certain information about short sale and proprietary transactions executed at the NYSE. These Rules date to a time when trading at the NYSE was not as automated as it is today. Today, the NYSE is able to track short sale and proprietary trades through its “OCS” and “PTP” systems and run surveillances based on that information. Because the NYSE can derive that information from its trading systems, the NYSE no longer needs member organizations to file separately that information. The NYSE therefore believes that these Rules can be deleted in their entirety.<sup>36</sup>

Finally, although FINRA has deleted FINRA Incorporated NYSE Rule 477, because the NYSE uses that Rule for disciplinary purposes specific to the organization, the NYSE will retain NYSE Rule 477 without change. Because FINRA has deleted FINRA Incorporated NYSE Rule 477, NYSE Rule 477 will lose its status as a Common Rule and FINRA will no longer retain any regulatory responsibility for this Rule.<sup>37</sup>

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<sup>35</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended. Neither NYSE nor the Exchange is adopting NASD Notice 03-68 as it is not a formally adopted rule. It is important to note that all of the Exchange’s members and member organizations that have public customers are also members of, and have their member firm conduct regulated by, FINRA. Thus, to the extent FINRA Rule 2010 and new Rule 2010 – NYSE Amex Equities apply to conduct involving non-managed fee-based account programs, which concerns member firm conduct, such application will be administered by FINRA. Upon adoption of new Rule 2010 – NYSE Amex Equities, the Exchange intends to issue guidance to its members and member organizations informing them of their obligations for such programs under the new Rule and FINRA rules.

<sup>36</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>37</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

The Exchange proposes to correspondingly delete Rules 405A-, 440F- and 440G- NYSE Amex Equities. Similarly, the Exchange will retain Non-NYSE Amex Equities Rule 477 without change for disciplinary purposes specific to NYSE Amex.

FINRA Rule Filing SR-FINRA-2008-030<sup>38</sup>

In this filing, FINRA adopted NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as FINRA Rule 3130. FINRA Rule 3130 requires each member firm to designate one or more principals to serve as Chief Compliance Officer and also requires that the Chief Executive Officer certify annually that the firm has established and maintained procedures and processes reasonably designed to ensure compliance with all applicable FINRA Rules and federal laws and regulations.

Because they are substantively duplicative of the FINRA Rule, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 342.30(d) and (e) (Annual Report and Certification) and Rule Interpretations 311(b)(5)/04 (Formation and Approval of Member Organizations – Officers – Other Dual or Multi-Designations) and /05 (Co-Designation of Principle Executive Officers) and 342.30(d)/01 (Annual Reports and Certification – Designation of Chief Compliance Officer) and (e)/01 (Annual Certification).

To harmonize NYSE Rules with the approved FINRA Rules, the NYSE proposes to (i) delete NYSE Rules 342.30(d) and (e) and Rule Interpretations 311(b)(5)/04 and /05 and 342.30(d)/01 and (e)/01, and (ii) replace them with proposed NYSE Rule 3130, which is substantially similar to FINRA Rule 3130. As proposed, NYSE Rule 3130 adopts the same language as FINRA Rule 3130, except for changing the term “member” to “member

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<sup>38</sup> See Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030).

organization”. Therefore, as proposed, NYSE Rule 3130 would require NYSE member organizations to complete their annual certifications at the same time they complete their certifications for FINRA.<sup>39</sup>

The Exchange proposes to correspondingly delete Rules 342.30(d) and (e) – NYSE Amex Equities and adopt Rule 3130 - NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR-FINRA-2008-033<sup>40</sup>

Here, FINRA adopted NASD Rule 3360 (Short-Interest Reporting) and FINRA Incorporated NYSE Rules 421(1) (Periodic Reports) and 421.10 (Short Positions) as new FINRA Rule 4560 and deleted these provisions from the Common Rules. FINRA Rule 4560 adopted rule text to consolidate the NASD and NYSE short-interest reporting requirements, including requiring members to follow certain reporting requirements for short positions in over-the-counter (“OTC”) and exchange-listed securities for all customer and proprietary accounts.

Accordingly, the NYSE proposes to (i) delete NYSE Rules 421(1) and 421.10, and (ii) adopt proposed NYSE Rule 4560 to replace the deleted NYSE Rules. Proposed NYSE Rule 4560 is substantially identical to FINRA Rule 4560. To conform NYSE Rule 4560 to the NYSE, the NYSE proposes to remove the references to “OTC Equity Securities” in the rule, including provision (b)(3), and change the term “member” to “member organization.” Because FINRA processes short-interest reporting on behalf of multiple exchanges, including the NYSE,

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<sup>39</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>40</sup> See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033).



proposed NYSE Rule 4560 will retain the requirement that member organizations report to FINRA.<sup>41</sup>

The Exchange proposes to correspondingly delete Rules 421(1) and 421.10 – NYSE Amex Equities and adopt Rule 4560 - NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR-FINRA-2008-039<sup>42</sup>

In this filing, FINRA adopted, inter alia, provisions of NASD Rules 2710(b)(10) and (11) (Corporate Financing Rule – Underwriting Terms and Arrangements) and FINRA Incorporated NYSE Rule 392(a) (Notification Requirements for Offerings of Listed Securities) as consolidated FINRA Rule 5190. FINRA Rule 5190 contains the Regulation M-related notice requirements for members participating in securities offerings. FINRA also deleted FINRA Incorporated NYSE Rule 392(b) as specific to the NYSE marketplace.

The NYSE continues to have regulatory responsibility with respect to Regulation M and relies on reports filed by member organizations pursuant to NYSE Rule 392 to conduct certain surveillances. Accordingly, the NYSE continues to need an NYSE-specific rule requiring firms to report this information to the NYSE. However, in an effort to harmonize the reporting obligations across the NYSE and FINRA as much as possible, the NYSE proposes to delete NYSE Rule 392 and adopt proposed NYSE Rule 5190.

Proposed NYSE Rule 5190 is substantially identical to FINRA Rule 5190, except for replacing the term “member” with the term “member organization”, changing the references to “OTC Equity Securities” and “securities” in the Rule to “listed securities” in order to apply the

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<sup>41</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>42</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039).

Rule to the NYSE, and adding language to paragraphs (b) and (e) of the Rule concerning stabilizing bids in order to ensure that the requirements of NYSE Rule 392(b) are fully imported into new NYSE Rule 5190. The substantive reporting requirements of NYSE Rule 392 are essentially being reorganized and renumbered into new NYSE Rule 5190 to help eliminate confusion and regulatory duplication for its member organizations. Member organizations will therefore continue to file these reports with the NYSE.<sup>43</sup>

The Exchange proposes to correspondingly delete Rule 392 – NYSE Amex Equities and adopt Rule 5190 - NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR-FINRA-2008-057<sup>44</sup>

In accordance with FINRA 2008-057, the NYSE incorporated changes to proposed NYSE Rule 5190. As noted above, the Exchange proposes to adopt corresponding Rule 5190– NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>45</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>46</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

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<sup>43</sup> See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

<sup>44</sup> See Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR-FINRA-2008-057).

<sup>45</sup> 15 U.S.C. 78f(b).

<sup>46</sup> 15 U.S.C. 78f(b)(5).

public interest. The proposed rule changes also support the principles of Section 11A(a)(1)<sup>47</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 are necessary and appropriate to conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based. The Exchange also believes that the proposed rule changes will provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. To the extent the Exchange has proposed changes that differ from the NYSE version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules. The Exchange therefore believes that the proposed rule changes support the objectives of the Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens.

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

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<sup>47</sup> 15 U.S.C. 78k-1(a)(1).

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 such 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-NYSEALTR-2009-26 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- NYSEALTR-2009-26. 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, 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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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- NYSEALTR-2009-26 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>48</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>48</sup> 17 CFR 200.30-3(a)(12).