

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62015; File No. SR-NYSE-2010-23)

April 30, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Deleting NYSE Rule 446 and Adopting New Rule 4370 to Correspond with Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

I. Introduction

On March 11, 2010, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to delete NYSE Rule 446 and adopt new Rule 4370 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission.⁴ The proposed rule change was published for comment in the Federal Register on March 26, 2010.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to delete NYSE Rule 446 and adopt new Rule 4370 to correspond with rule changes filed by FINRA and approved by the Commission.⁶

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. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR-FINRA-2009-036) (“Release No. 34-60534”).

⁵ See Securities Exchange Act Release No. 61743 (March 19, 2010), 75 FR 14650.

⁶ See Release No. 34-60534, supra note 4.

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"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.⁷

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.⁸

In 2008, FINRA deleted FINRA Incorporated NYSE Rule 446 (Business Continuity and Contingency Plans) as substantively duplicative of NASD Rules 3510

⁷ 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.

⁸ 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.

(Business Continuity Plans) and 3520 (Emergency Contact Information).⁹

Correspondingly, the Exchange amended NYSE Rule 446 (Business Continuity and Contingency Plans) to remove the existing text and incorporate NASD Rules 3510 and 3520 by reference.¹⁰ Subsequently, FINRA adopted, subject to certain amendments, NASD Rules 3510 and 3520 as consolidated FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).¹¹

The Exchange correspondingly proposes to delete NYSE Rule 446 and replace it with proposed NYSE Rule 4370, which is substantially similar to the new FINRA Rule.¹² The Exchange states that the purpose of this proposed rule change is to harmonize the NYSE Rules with the consolidated FINRA Rules. The Exchange states that, as proposed, NYSE Rule 4370 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’s and FINRA’s membership structures. The Exchange also states that, in paragraph (f)(2) to proposed NYSE Rule 4370, the Exchange has added a cross-reference to NYSE Rule 416A 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 Rules.

⁹ See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving SR-FINRA-2008-036).

¹⁰ See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (order approving SR-NYSE-2008-080).

¹¹ See Release No. 34-60534, supra note 4.

¹² NYSE Amex submitted a companion rule filing amending its rules in accordance with FINRA’s rule changes, which the Commission has approved. See Securities Exchange Act Release No. 62014 (April 30, 2010)(SR-NYSE-Amex-2010-26).

The Exchange also proposes to add Supplementary Material .01 to NYSE Rule 4370 to provide that, for the 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. The Exchange states that this change is necessary to ensure that both proposed NYSE Rule 4370 and FINRA Rule 4370 are fully harmonized.

Finally, the Exchange proposes that the effective date for the proposed rule changes be retroactive to December 14, 2009, the same effective date for the corresponding FINRA rule changes.¹³ As a result, there should be no regulatory gaps between the FINRA and NYSE Rules and that, as applicable, the NYSE Rules would maintain their status as Common Rules under the Agreement.¹⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

¹³ See FINRA Regulatory Notice 09-60 (October 15, 2009).

¹⁴ As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

¹⁵ 15 U.S.C. 78f(b)(5).

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.¹⁶

The Commission believes that the proposed rule change provides greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for NYSE members, including Dual Members. In addition, the Commission believes that retroactive application of the proposed rule change to December 14, 2009 is appropriate to assure that there are no regulatory gaps between FINRA and NYSE Rules, and that, as applicable, the NYSE Rules would maintain their status as Common Rules under the Agreement.

¹⁶ In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-2010-23) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).