SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70962; File No. SR-NYSE-2013-76)

November 29, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Rules Concerning Communications with the Public to Harmonize Them with Certain Financial Industry Regulatory Authority, Inc. Rules and Make Other Conforming Changes

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 19b-4 thereunder,[2] notice is hereby given that on November 15, 2013, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Exchange Act Rule 19b-4(f)(6),[3] which renders the proposal effective upon receipt of this filing by the Commission.

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

The Exchange proposes to amend its rules concerning communications with the public to harmonize them with certain Financial Industry Regulatory Authority, Inc. ("FINRA") rules and make other conforming changes. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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1 15 U.S.C.78s(b)(1).

2 17 CFR 240.19b-4.

3 17 CFR 240.19b-4(f)(6).

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 Exchange 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 Exchange proposes to amend its rules concerning communications with the public to harmonize them with certain FINRA rules and make other conforming changes. Set forth below are descriptions of the harmonization process, the current NYSE rules, and the proposed NYSE rules. Specifically, the Exchange proposes to (i) delete paragraphs (a)(1), (d), (i), (j) and (l) of NYSE Rule 472, Supplementary Materials 472.10(1), (3), (4) and (5), and 472.90, and Interpretations 472/01 and 472/03 through 472/11; (ii) adopt new rule text that is substantially similar to FINRA Rules 2210, 2212, and 9551; and (iii) make other conforming changes.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Exchange Act Rule 17d-2, the Exchange, NYSER, and FINRA entered into an agreement (the "Agreement") to

[4] References to rules are to NYSE rules unless otherwise indicated. The remaining provisions of Rule 472 and supplementary material and interpretations not addressed in this proposal concern research and would remain in place because FINRA and NYSE have not yet harmonized their research rules.

reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE MKT LLC ("NYSE MKT") became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, the Exchange, and NYSE MKT 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.[6] FINRA recently harmonized NASD and FINRA Incorporated NYSE Rules and interpretations concerning communications with the public.[7] In that filing, FINRA adopted NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216 and deleted paragraphs (a)(1), (i), (j) and (l) of FINRA Incorporated NYSE Rule 472, FINRA Incorporated NYSE Rule Supplementary Materials 472.10(1), (3), (4) and (5)

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5 See Exchange Act Release No. 56148 (Jul. 26, 2007), 72 FR 42146 (Aug. 1, 2007) (order approving the Agreement); Exchange Act Release No. 56147 (Jul. 26, 2007), 72 FR 42166 (Aug. 1, 2007) (order approving the incorporation of certain NYSE Rules as "Common Rules"); Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (Aug. 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

6 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, dated March 12, 2008.

7 See Exchange Act Release No. 66681 (Mar. 29, 2012), 77 FR 20452 (Apr. 4, 2012).

and 472.90, and FINRA Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. FINRA's rule change became effective on February 4, 2013.[8]

Current Communications with the Public Rules and Interpretations

Rule 472(a)(1) requires that each advertisement, sales literature or other similar type of communication that is generally distributed or made available by a member organization to customers or the public be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

Rule 472(d) requires that communications with the public be retained in accordance with Rule 440.

Rule 472(i) provides that no member organization may use any communication that contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; (ii) promises of specific results, exaggerated or unwarranted claims; (iii) opinions for which there is no reasonable basis; or (iv) projections or forecasts of future events that are not clearly labeled as forecasts.

Rule 472(j) sets forth specific standards for recommendations, records of past performance, projections and predictions, comparisons, dating reports, identification of sources, and testimonials.

Rule 472(l) provides that other communications activities may include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles, or making radio/TV appearances. Member organizations must establish specific written supervisory procedures applicable to allied members and employees who engage in these types of communications activities. These

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[8] See FINRA Regulatory Notice 12-29.

procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in Rule 472(i). In addition, any activity that includes discussion of specific securities is subject to the specific standards in Rule 472(j).

Supplementary Materials 472.10(1), (3), (4) and (5) define "communication," "advertisement," "market letter," and "sales literature," respectively. Interpretations 472/01, 472/03, 472/04, and 472/05 provide additional interpretations relating to these definitions. For purposes of Rule 472(a)(1), Supplementary Material 472.90 defines a "qualified person" as one who has passed an examination acceptable to the Exchange. Rule Interpretation 472/06 addresses other communication activities, including public appearances. Rule Interpretations 472/08 and 472/09 set forth general and specific content standards. Rule Interpretations 472/07, 472/10, and 472/11 address material externally prepared, guidelines for "discount" communications, and other regulations, respectively.

Proposed Rule Change

The Exchange proposes to delete the foregoing rules and interpretations relating to communications with the public and adopt the text of FINRA Rules 2210, 2212, and 9551, subject to certain technical and conforming changes.[9] As noted in Rule 0, NYSE rules that refer to NYSER, NYSER staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the Agreement, as applicable. The Exchange does not propose to adopt the text of FINRA Rules 2213, 2214, 2215, and 2216 because they cover products that are not

[9] The technical and conforming changes are that the Exchange would (i) substitute the term "member organization" for "member," (ii) substitute the term "Exchange" for "FINRA," (iii) change certain cross-references to FINRA rules to cross-references to Exchange rules, and (iv) add supplementary material to define the term "associated person."

traded on the Exchange or a limited exception for investment analysis tools that is not being adopted. These rules would continue to apply to all Dual Members.

Communication Categories

Under proposed Rule 2210(a), the following three communication categories would be established:

- "Institutional communication" would include any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member organization's internal communications. "Institutional investor" would include any (i) person described in FINRA Rule 4512(c), regardless of whether the person has an account with a member organization; (ii) governmental entity or subdivision thereof; (iii) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (iv) qualified plan, as defined in Exchange Act Section 3(a)(12)(C), or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (v) member organization or registered person of such a member organization; and (vi) person acting solely on behalf of any such institutional investor.

- "Retail communication" would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. "Retail investor" would include any person other than an institutional investor, regardless of whether the person has an account with the member organization.

- "Correspondence" would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

The proposed communication categories would replace the communication categories currently defined in Supplementary Material 472.10(1), (3), (4) and (5).

Approval, Review and Recordkeeping Requirements

Proposed Rule 2210(b)(1)(A) would require an appropriately qualified registered principal of the member organization to approve each retail communication before the earlier of

its use or its filing with the Exchange's Advertising Regulation Department ("Department"). The principal registration required to approve particular communications would depend upon the permissible activities for each principal registration category. Current Rule 472(a)(1) requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1), but the Exchange does not require member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(B) would provide that the requirements of proposed Rule 2210(b)(1)(A) could be met by a Supervisory Analyst approved pursuant to Rule 344 with respect to (i) research reports on debt and equity securities; (ii) retail communications as described in Rule 472.10(2)(a); and (iii) other research that does not meet the definition of "research report" under Rule 472.10(2), provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration. As stated above, current Rule 472(a)(1) requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1). As such, the proposed rule would be limited to approval by Supervisory Analysts only and to certain types of communications.

Proposed Rule 2210(b)(1)(C) would provide an exception from the principal approval requirements of proposed Rule 2210(b)(1)(A) for retail communications, if at the time that a member organization intends to publish or distribute the retail communication (i) another member organization has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards and (ii) the member organization using the communication in reliance on this exception has not materially altered it

and will not use it in a manner that is inconsistent with the conditions of the Department's letter. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(D) would except from the principal approval requirements of proposed Rule 2210(b)(1)(A) three additional categories of retail communications, provided that the member organization supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rule 342. These communications include (i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 472.10(2)(a), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member organization. Under current Rule 342, correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules. The proposed rule change would specifically delineate these three categories of retail communications that would be excepted from the additional principal approval requirements under proposed Rule 2210.

Proposed Rule 2210(b)(1)(E) would allow the Exchange, pursuant to the Rule 9600 Series, to grant an exemption from the principal approval requirements of proposed Rule 2210(b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent that the exemption is consistent with the purposes of Rule 2210, the protection of investors, and the public interest. Current Rule 9610 sets forth procedures for exemptive relief; the Exchange proposes to amend Rule 9610 by adding a cross-reference to proposed Rule 2210, as described below.

Proposed Rule 2210(b)(1)(F) would require, notwithstanding any other provision of Rule 2210, a registered principal to approve a communication prior to the member organization's filing it with the Department. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rules 2210(b)(2) and (3) generally would impose certain supervisory and review requirements with regard to a member organization's correspondence and institutional communications. Proposed Rule 2210(b)(2) would subject all correspondence to the supervision and review requirements already in place under Rule 342. Proposed Rule 2210(b)(3) would require each member organization to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member organization and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Exchange upon request. These requirements are similar to current Rule 342.10(B)(v), which provides that correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules, and Rule 342.17, which requires member organizations to develop written policies and procedures that are appropriate for their

business, size, structure and customers in connection with the review of communications with the public relating to their business. Rule 472(c) also requires each member organization to establish written procedures reasonably designed to ensure that allied members, member organizations and their employees are in compliance with Rule 472, which includes both communications with the public provisions and research provisions. While proposed Rule 2210(b)(3) would cover written procedures relating to communications with the public, the Exchange would maintain Rule 472(c) to cover written procedures for the research provisions that will remain in that rule.

Proposed Rule 2210(b)(4)(A) would set forth the recordkeeping requirements for retail and institutional communications. This provision would incorporate by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a-4.[10]

Proposed Rule 2210(b)(4)(A) specifies that such records would have to include:

- A copy of the communication and the dates of first and (if applicable) last use;
- The name of any registered principal who approved the communication and the date that approval was given;

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[10] Exchange Act Rule 17a-4(b) requires broker-dealers to preserve certain records for a period of not less than three years, the first two years in an easily accessible place. Among these records, pursuant to Exchange Act Rule 17a-4(b)(4), are "[o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph, the term communications includes sales scripts." Exchange Act Rule 17a-4(f) permits broker-dealers to maintain and preserve these records on "micrographic media" or by means of "electronic storage media," as defined in the rule and subject to a number of conditions.

- In the case of a retail communication or institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;[11]

- Information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and

- For retail communications that would rely on the exception under proposed Rule 2210(b)(1)(C), the name of the member organization that filed the retail communication with the Department and a copy of the Department's review letter.

Current Rule 440 also incorporates by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a-4. Current Rule 472(d) provides that communications with the public prepared or issued by a member organization must be retained in accordance with Rule 440, and the names of the persons who prepared, reviewed, and approved the material must be ascertainable from the retained records, and those records must be readily available to the Exchange upon request. The Exchange proposes to delete current Rule 472(d) because proposed Rule 2210(b)(4)(B) would address recordkeeping requirements and cross-reference Rule 440 with respect to correspondence recordkeeping requirements.

Filing Requirements and Review Procedures

Proposed Rule 2210(c) would set forth the filing requirements and review procedures for retail communications. The Exchange does not currently require member organizations to file communications with the Exchange, and as such, the Exchange does not currently have a comparable rule.

Proposed Rule 2210(c)(1)(A) would require a member organization to file with the Department at least 10 business days prior to first use any retail communication that is published

[11] To the extent clerical staff is employed in the preparation or distribution of the communication, the records should include the name of the person on whose behalf the communication was prepared or distributed.

or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). This filing requirement continues for a period of one year beginning on the date reflected in the Central Registration Depository ("CRD") system as the date that NYSE membership became effective. To the extent any retail communication is a free writing prospectus that has been filed with the Commission pursuant to Rule 433(d)(1)(ii), promulgated under the Securities Act of 1933 ("Securities Act"), the member organization may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

Proposed Rule 2210(c)(1)(B) would authorize the Department to require a member organization to file all of its communications, or the portion of the member organization's material relating to specific types or classes of securities or services, with the Department at least 10 business days prior to first use, if the Department determines that the member organization has departed from the standards of the proposed rule. The Department would notify the member organization in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed would take effect 21 calendar days after service of the written notice, during which time the member organization may request a hearing under proposed Rule 9551[12] and Rule 9559.

Proposed Rule 2210(c)(2) would require member organizations to file retail communications concerning any registered investment company that include self-created rankings and retail communications concerning security futures at least 10 business days prior to first use and to withhold them from use until any changes specified by the Department have been

[12] As discussed below, the Exchange proposes to adopt Rule 9551, which is substantially similar to FINRA Rule 9551.

made. The requirement to file retail communications concerning security futures prior to first use would not apply to (i) retail communications that are submitted to another self-regulatory organization having comparable standards pertaining to such communications and (ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member organization. The Exchange does not propose to adopt the text of FINRA 2210(c)(2)(C), which requires prior filing of retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings as defined in FINRA Rule 2213 (the text of which the Exchange also does not propose adopting) because it covers products that are not traded on the Exchange, and FINRA Rule 2213 would continue to apply to all Dual Members.

Proposed Rule 2210(c)(3)(A) would require retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) to be filed within 10 business days of first use or publication. In addition, the filing of any retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the retail communication. Proposed Rule 2210(c)(3)(B) would require retail communications concerning public direct participation programs to be filed within 10 business days of first use or publication. The Exchange does not propose to adopt the text of FINRA Rule 2210(c)(3)(C), which requires prior filing of first use templates for written reports produced by, or retail communications concerning an investment analysis tool, as such term is defined in FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would

continue to apply to all Dual Members. As such, proposed Rule 2210(c)(3)(C) would be marked "Reserved."

Proposed Rule 2210(c)(3)(D) would require member organizations to file within 10 business days of first use retail communications concerning collateralized mortgage obligations that are registered under the Securities Act.

Under proposed Rule 2210(c)(3)(E), member organizations would have to file within 10 business days of first use all retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (E) of paragraph (c)(3) of proposed Rule 2210. This provision would exclude retail communications that are already subject to a separate filing requirement found elsewhere in proposed paragraph (c), such as retail communications concerning registered investment companies or public direct participation programs.

Proposed Rule 2210(c)(4) would provide that, if a member organization has filed a draft version or "story board" of a television or video retail communication pursuant to a filing requirement, then the member organization also must file the final filmed version within 10 business days of first use or broadcast.

Proposed Rule 2210(c)(5) would specify that a member organization must provide with each filing the actual or anticipated date of first use, the name, title and CRD number of the registered principal who approved the communication, and the date of approval.

Proposed Rule 2210(c)(6) would provide that each member organization's written communications may be subject to a spot-check procedure, and that member organizations must submit requested material within the time frame specified by the Department.

Proposed Rule 2210(c)(7)(A) would create a filing exclusion for retail communications that previously have been filed with the Department and that are to be used without material change. Proposed Rule 2210(c)(7)(B) would create an exclusion for retail communications that are based on templates that were previously filed with the Department, the changes to which are limited to updates of more recent statistical or other non-narrative information. Proposed Rule 2210(c)(7)(C) would exclude retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization.[13]

Paragraphs (c)(7)(D), (E), (G) and (H) of proposed Rule 2210 would create a filing exclusion for retail communications that do no more than identify a national securities exchange symbol of the member organization or identify a security for which the member organization is a registered market maker; advertisements and sales literature that do no more than identify the member organization or offer a specific security at a stated price; certain "tombstone" advertisements governed by Securities Act Rule 134; and press releases that are made available only to members of the media.

Proposed Rule 2210(c)(7)(F) would create a filing exclusion for prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Commission or any state, or that are exempt from such registration, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing

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[13] This filing exception would have the same scope as the proposed exception from the principal pre-use approval requirements for retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization. See Proposed Rule 2210(b)(1)(D)(iii).

prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii) would not be considered a prospectus for purposes of this exclusion.[14]

Proposed Rule 2210(c)(7)(I) would create a filing exclusion for any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that the publisher is not an affiliate of the member organization using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member organization is promoting; neither the member organization using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and the member organization using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

Paragraphs (c)(7)(J) and (K) of proposed Rule 2210 would create filing exclusions for correspondence and institutional communications. Proposed paragraph (c)(7)(L) would exclude from filing communications that refer to types of investments solely as part of a listing of products or services offered by the member organization.

Proposed Rule 2210(c)(7)(M) would exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. Proposed Rule 2210(c)(7)(N) would exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the Exchange pursuant to Section 202.06 of the NYSE Listed Company Manual (or any successor provision).

The Exchange does not propose to adopt FINRA Rule 2210(c)(8) because Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder only apply to a registered

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[14] Securities Act Rule 433(d)(1)(ii) requires any offering participant, other than the issuer, to file with the Commission a free writing prospectus that is used or referred to by such offering participant and distributed by or on behalf of such person in a manner reasonably designed to lead to its broad unrestricted dissemination.

national securities association, i.e., FINRA. As such, Rule 2210(c)(8) would be marked "Reserved."

Proposed Rule 2210(c)(9)(A) would allow the Exchange to exempt, pursuant to the Rule 9600 Series, a member organization from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown. Proposed Rule 2210(c)(9)(B) would allow the Exchange to grant an exemption from the filing requirements of paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, provided that the exemption is consistent with the purposes of the rule, the protection of investors, and the public interest. Generally, this relief would be limited to the same extent as in proposed paragraph (b)(1)(E), which would authorize the Exchange to grant exemptive relief from the principal approval requirements in proposed Rule 2210(b)(1)(A) for retail communications, subject to the same standards.

Content Standards

Proposed Rule 2210(d) would incorporate the current content standards applicable to communications with the public that are found in Rules 472(i) and (j) and Rule Interpretations 472/08 and 472/09, subject to certain changes. Proposed Rule 2210(d)(1) is comparable to the general standards for all communications in Rule 472(i) and Rule Interpretation 472/08; however, the proposed rule would expand upon these general standards.[15]

Proposed Rule 2210(d)(1)(A) would provide that all member organization communications must be based on principles of fair dealing and good faith, must be fair and

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[15] Consistent with the changes proposed by FINRA, the Exchange does not propose to incorporate Rule Interpretations 472/07, 472/10, and 472/11, which cover material externally prepared, guidelines for "discount" communications, and other regulations, respectively. The Exchange does not believe that it is necessary to address these types of communications with the public because they would be covered by the general standards of the proposed rule.

balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. In addition, the proposed rule would provide that no member organization may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. Current Rule 472(i), which sets forth the general content standards for all communications, is comparable to the proposed rule.

As with current Rule 472(i), which specifically prohibits promissory statements, proposed Rule 2210(d)(1)(B) would prohibit a member organization from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. In addition, no member organization may publish, circulate or distribute any communication that the member organization knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Proposed Rule 2210(d)(1)(C) would allow information to be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(D) would provide that member organizations must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. In addition, communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(E) would provide that member organizations must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(F) would provide that communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, the following would not be prohibited:

- A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; and
- A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

The Exchange does not propose to adopt the text of FINRA Rule 2210(d)(1)(F)(ii), which references an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would continue to apply to all Dual Members. As such, text of proposed Rule 2210(d)(1)(F)(ii) would correspond to the text of FINRA Rule 2210(d)(1)(F)(iii).

Current Rule 472(j)(3) provides that any projection or prediction must contain the bases or assumptions upon which they are made and must indicate that the bases or assumptions of the materials upon which such projections and predictions are made are available upon request. The

proposed rule would make a blanket prohibition against predictions and projections and carve out certain exemptions.

Proposed Rule 2210(d)(2) would provide that any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features. Similarly, current Rule 472(j)(4) provides that any comparison of one member organization's service, personnel, facilities or charges with those of other firms must be factually supportable.

Rule 2210(d)(3) would require all retail communications and correspondence to (i) prominently disclose the name of the member organization, and would allow a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction; (ii) reflect any relationship between the member organization and any non-member organization that, or individual who, also is named in the communication; and (iii) if the communication includes other names, reflect which products and services are offered by the member organization. Proposed Rule 2210(d)(3) would apply these standards to correspondence as well as to retail communications. A member organization would be permitted to use the name under which the member organization's broker-dealer business is conducted as disclosed on the member organization's Form BD, as well as a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction. The proposed rule would not apply to "blind" advertisements used to recruit personnel. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(A) would specify that in retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes

apply, or which do not, unless income is free from all applicable taxes, and provides an example of income from an investment company investing in municipal bonds that is free from federal income tax but subject to state or local income taxes. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(B) would prohibit communications from characterizing income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(C) would add new language concerning comparative illustrations of the mathematical principles of tax-deferred versus taxable compounding. First, the illustration would have to depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum. Second, the illustration would have to use and identify actual federal income tax rates. Third, the illustration would be permitted (but not required) to reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state. Fourth, the tax rates used in the illustration that is intended for a target audience would have to reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income. Fifth, if the illustration covers an investment's payout period, the illustration would have to reflect the impact of taxes during this period. Sixth, the illustration could not assume an unreasonable period of tax deferral. Seventh, the illustration would have to include the following disclosures, as applicable:

- The degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

- The possible effects of investment losses on the relative advantage of the taxable versus tax-deferred investments;

- The extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

- The fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

- Its underlying assumptions;[16]

- The potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

- That an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(5) would require retail communications and correspondence that present the performance of a non-money market mutual fund, to disclose the fund's maximum sales charge and operating expense ratio as set forth in the fund's current prospectus fee table. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(6)(A) would provide that, if any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. This requirement would be identical to current Rule 472(j)(7)(iv).

Proposed Rule 2210(d)(6)(B) would require any retail communications and correspondence that provide a testimonial concerning the investment advice or investment

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[16] These assumptions may include, for example, the age at which an investor may begin withdrawing funds from a tax-deferred account, the actual federal tax rates applied in the hypothetical taxable illustration, any state income tax rate applied in the illustration, and the charges associated with the hypothetical investment.

performance of a member organization or its products to prominently disclose (i) the fact that the testimonial may not be representative of the experience of other customers, (ii) the fact that the testimonial is no guarantee of future performance or success, and (iii) if more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial. The proposed rule would be substantially the same as current Rule 472(j)(7)(i)-(iii), except that Rule 472(j)(7)(iii) refers instead to a "nominal amount."

Proposed Rule 2210(d)(7) would apply to retail communications that contain a recommendation. Proposed Rule 2210(d)(7)(A) would require disclosure of certain specified conflicts of interest to the extent applicable. Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) that at the time the communication was published or distributed, the member organization was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member organization or associated persons will sell to or buy from customers on a principal basis; (ii) that the member organization or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member organization was manager or co-manager of a public offering of any securities of the issuer whose securities were recommended within the past 12 months. The proposed rule would be more detailed than current Rule 472(j)(1), which covers recommendations.

Proposed Rule 2210(d)(7)(B) would require a member organization to provide, or offer to furnish upon request, available investment information supporting the recommendation, and if the recommendation is for a corporate equity security, to provide the price at the time the recommendation is made. The proposed rule is comparable to current Rule 472(j)(1), which provides that when recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered, and the market price at the time the recommendation is made must be indicated.

Proposed Rule 2210(d)(7)(C) would amend the provisions governing communications that include past recommendations, which are currently found in Rule 472(j)(2). The proposed standards mirror those found in Rule 206(4)-1(a)(2) under the Investment Advisers Act of 1940 ("Advisers Act"), which apply to investment adviser advertisements that contain past recommendations.[17]

Proposed Rule 2210(d)(7)(D) expressly would exclude from its coverage communications that meet the definition of "research report" or that are public appearances by a research analyst for purposes of Rule 472 and that include all of the applicable disclosures required by that rule. Proposed Rule 2210(d)(7)(D) also would exclude any communication that

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[17] Proposed Rule 2210(d)(7)(C), like Advisers Act Rule 206(4)-1(a)(2), generally would prohibit retail communications from referring to past specific recommendations of the member organization that were or would have been profitable to any person. The proposed rule would allow, however, a retail communication or correspondence to set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member organization within the immediately preceding period of not less than one year. The list would have to provide certain information regarding each recommended security and include a prescribed cautionary legend warning investors not to assume that future recommendations will be profitable.

recommends only registered investment companies or variable insurance products.[18] The Exchange does not currently have a comparable rule regarding registered investment companies.

Under proposed Rule 2210(d)(8), prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the Commission would not be subject to the standards of proposed Rule 2210(d); provided, however, that the standards would apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii). The Exchange does not currently have a comparable rule.

Certain Text Not Adopted

The Exchange does not propose to adopt the text of FINRA Rule 2210(e), which relates to limitations on the use of FINRA's name and any other corporate name owned by FINRA. The Exchange does not propose to adopt the text of FINRA Rule 2210(e)(2) because that provision relates to over-the-counter transactions, which the Exchange does not regulate. Lastly, the Exchange does not propose to adopt the text of FINRA Rule 2210(e)(3) because the Exchange has not previously imposed a requirement on member organizations to provide a link to the Exchange's website in connection with its indication of NYSE membership, and the Exchange does not believe it is necessary to impose such a restriction at this time. FINRA Rule 2210(e)(3) would continue to apply to all Dual Members. As such, Rule 2210(e) would be marked "Reserved."

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[18] The Exchange is proposing to exclude communications that recommend only registered investment companies or variable insurance products because it believes that recommendations of these products do not raise the same kinds of conflicts of interest as recommendations of other types of securities, since they are pooled investment vehicles rather than securities of a single issuer.

Public Appearances

Proposed Rule 2210(f) sets forth the general standards that would apply to public appearances. Public appearances would have to meet the general "fair and balanced" standards of proposed Rule 2210(d)(1). The disclosure requirements applicable to recommendations in proposed Rule 2210(d)(7) would apply if the public appearance included a recommendation of a security. The proposed rule also would require member organizations to establish appropriate written policies and procedures to supervise public appearances, and clarify that scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of proposed Rule 2210. The proposed requirement to establish supervisory policies and procedures for public appearances would be consistent with Rule 472(l) and Rule Interpretation 472/06, which covers other communications activities.

Violations of Other Rules

Proposed Rule 2210(g) would provide that any violation by a member organization of any rule of the Commission or the Securities Investor Protection Corporation applicable to member organization communications would be deemed a violation of proposed Rule 2210. FINRA Rule 2210(g) also applies to violations of Municipal Securities Rulemaking Board ("MSRB") rules because FINRA enforces such rules. Because the Exchange does not enforce MSRB rules, the reference to MSRB rules would not be included in proposed Rule 2210(g).

Use of Investment Companies Rankings in Retail Communications

The Exchange proposes to adopt the text of FINRA Rule 2212, which would cover the use of investment company rankings in retail communications. The Exchange currently does not have a comparable rule.

Proposed Rule 2212(a) would define "Ranking Entity" as "any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking."

Proposed Rule 2212(b) would provide that member organizations may not use investment company rankings in any retail communication other than (i) rankings created and published by Ranking Entities or (ii) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also would have to conform to the requirements described below.

Proposed Rule 2212(c) would require certain disclosures in retail communications. A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category. All retail communications containing an investment company ranking also would have to disclose prominently:

- The name of the category (e.g., growth);
- The number of investment companies or, if applicable, investment company families, in the category;
- The name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;
- The length of the period (or the first day of the period) and its ending date; and
- Criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

In addition, all retail communications containing an investment company ranking would have to disclose:

- The fact that past performance is no guarantee of future results;

- For investment companies that assess front-end sales loads, whether the ranking takes those loads into account;

- If the ranking is based on total return or the current Commission standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

- The publisher of the ranking data (e.g., "ABC Magazine, June 2011"); and

- If the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

Proposed Rule 2212(d) would provide that any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member organization would only be able to use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used. In addition, except for money market mutual funds:

- Retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

- An investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

- An investment company ranking based on yield may be based only on the current Commission standardized yield and must be accompanied by total return rankings for the time periods specified in Rule 2212(d)(2)(B).

Proposed Rule 2212(e) would provide specific requirements with respect to categories. The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company. An investment company ranking must be based only on (i) a published category or subcategory created by a Ranking Entity or (ii) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity. Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

Proposed Rule 2212(f) would provide that investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

Proposed Rule 2212(g) would provide that retail communications may contain rankings of investment company families, provided that these rankings comply with proposed Rule 2212, and further provided that no retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in proposed Rule 2212(d)(2)(B). For purposes of Rule 2212, the term "investment company family" would mean any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

Proposed Rule 2212(h) would specify that Rule 2212 would not apply to any reprint or excerpt of any article or report that is excluded from the Exchange's Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).

Failure to Comply with Public Communication Standards

The Exchange recently adopted certain disciplinary and procedural rules modeled on the rules of FINRA; however, at that time, the Exchange did not propose to adopt the text of FINRA Rule 9551, which then concerned failure to comply with public communication standards in NASD Rule 2210.[19] As such, Rule 9551 is currently marked "Reserved." As a result of the Exchange's proposed adoption of Rule 2210, the Exchange proposes to adopt the text of FINRA Rule 9551 as Rule 9551, with certain conforming changes.

Proposed Rule 9551(a) would provide that the Exchange staff may issue a written notice requiring a member organization to file communications with the Department at least 10 days prior to use if the Exchange staff determines that the member organization has departed from the standards of Rule 2210. Proposed Rule 9551(b) would provide that, except as otherwise provided, the Exchange staff would serve the member organization with such notice in accordance with NYSE Rule 9134. When counsel for the member organization or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then the Exchange staff may serve notice on counsel or such other person authorized to represent others under Rule 9141 as specified in Rule 9134.

Proposed Rule 9551(c) would provide that a notice issued under the proposed rule would state the specific grounds and include the factual basis for the Exchange action. The notice would state when the Exchange action will take effect. The notice would state that the

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[19] See Exchange Act Release No. 69045 (Mar 5, 2013), 78 FR 15394 (Mar 11, 2013).

respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also would inform the respondent of the applicable deadline for filing a request for a hearing and would state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice would explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

Proposed Rule 9551(d) would provide that pursuant to proposed Rule 2210(c)(1)(B), the pre-use filing requirement referenced in a notice issued and served under the proposed rule would become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559. FINRA Rule 9551(e) also includes a cross-reference to FINRA Rule 2220(c)(2), which relates to options communications. The Exchange does not propose to adopt the text of FINRA Rule 2220 so this cross-reference is not included in the proposed rule.

Proposed Rule 9551(e) would provide that a member organization served with a notice under the proposed rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing would be made before the effective date of the notice, as indicated in proposed Rule 9551(d). A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

Proposed Rule 9551(f) would provide that if a member organization does not timely request a hearing, the pre-use filing requirements specified in the notice would become effective 21 days after service of the notice and the notice would constitute final Exchange action.

Proposed Rule 9551(g) would provide that a member organization that is subject to a pre-use filing requirement under the proposed rule may file a written request for modification or

termination of the requirement. Such request would be filed with the head of the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

Conforming Changes

The Exchange also proposes to make certain conforming changes to Rules 342, 9559, and 9610. Specifically, the Exchange proposes to amend Supplementary Materials .10(B) and .17 to Rule 342, which covers the approval, supervision, and control of offices, to include a cross-reference to proposed Rule 2210 in addition to the current cross-references to Rule 472 in that rule. The Exchange also proposes to amend the definition of "branch office" in Supplementary Material .10 to Rule 342 to replace references to "advertisements" and "sales literature" with references to "retail communications." The Exchange proposes to amend Rule 9559, which covers hearing procedures for expedited proceedings under the Rule 9550 Series, to include cross-references to proposed Rule 9551. The Exchange proposes to amend Rule 9610(a), which permits member organizations to apply for exemptive relief from other NYSE rules, to include a cross-reference to proposed Rule 2210. The Exchange notes that FINRA Rules 9559 and 9610 include cross-references to FINRA Rules 9551 and 2210, respectively.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Exchange Act Section 6(b),[20] in general, and furthers the objectives of Exchange Act Section 6(b)(5),[21] in particular, because it is designed to promote just and equitable principles of trade and to remove

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE member organizations that are also FINRA members are subject to Rule 472 and FINRA Rules 2210, 2212, and 9551, and harmonizing these rules by adopting proposed Rules 2210, 2212, and 9551 would promote just and equitable principles of trade by requiring a single standard for communications with the public. The Exchange believes that to the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing communications with the public, which would promote just and equitable principles of trade and help to protect investors. As such, the Exchange believes the proposed rule change meets the requirements of Exchange Act Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed rule change is not intended to address competitive issues but rather to achieve greater consistency between the Exchange's rules and FINRA's rules.

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 Exchange Act Section 19(b)(3)(A)(iii)[22] and Rule 19b-4(f)(6) thereunder.[23] 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, it has become effective pursuant to Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent 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.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it would allow the Exchange to immediately conform its rules to corresponding FINRA rules. This will ensure that Dual Members generally will be subject to a single set of rules governing communications with the public. As noted by the Exchange, the proposal would harmonize NYSE and FINRA rules. In addition, the proposal would update and add specificity to the Exchange's requirements governing communications with the public, which are designed to help protect customers of all

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22 15 U.S.C. 78s(b)(3)(A)(iii).

23 17 CFR 240.19b-4(f)(6).

24 17 CFR 240.19b-4(f)(6).

25 17 CFR 240.19b-4(f)(6)(iii).

NYSE members. For these reasons, the Commission designates the proposed rule change to be operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings under Exchange Act Section 19(b)(2)(B)[27] to determine whether the proposed rule change should be approved or 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 Exchange 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. Please include File Number SR-NYSE-2013-76 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.

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[26] For purposes 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).

[27] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2013-76. 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 website (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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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-NYSE-2013-76 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.[28]

Kevin M. O'Neill
Deputy Secretary

[28] 17 CFR 200.30-3(a)(12).