

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56173; File No. SR-NYSE-2007-67]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.)

July 31, 2007.

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 July 24, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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.

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

The proposed rule change reflects changes in the requirements for membership in the Exchange as a result of the proposed consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”) that will result in a combined self-regulatory organization that will be called Financial Industry Regulatory Authority, Inc. (“FINRA”).<sup>3</sup> The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### 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 NYSE 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 these statements may be examined at the places specified in Item IV below. The NYSE has

prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 is proposing to amend its membership rules to reflect the changes to the regulatory landscape that will result from the proposed consolidation of the member firm regulatory functions of NASD and NYSE Regulation.

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the “Transaction”).<sup>4</sup> The objective of the Transaction is to increase consistency and efficiency of member firm regulation, including examination, enforcement, and rulemaking, for the benefit of individual investors and overall market integrity. It is also an objective of the Transaction to reduce the regulatory and financial burdens placed on member firms as a result of duplicate self-regulatory structures.

The concentration of member firm regulation in FINRA will further the goal that the NYSE, NASD and the securities industry have already been working on: To harmonize the member firm rules of the two organizations to eliminate overlapping but slightly different (or differently interpreted) rules. Because that harmonization process will not be complete by the closing of the Transaction, the Transaction contemplates a transition period during which FINRA will continue to apply to NYSE member organizations the member firm rules of the NYSE.

To effect this transition, FINRA will adopt the relevant NYSE member firm rules. For administrative convenience, FINRA will accomplish this by incorporating these rules into FINRA’s rulebook, necessitating that the rules also remain as rules of the NYSE. The NYSE and FINRA will execute a Rule 17d-2 agreement that will allocate the

regulatory responsibility for those rules to FINRA.<sup>5</sup>

A necessary part of this arrangement is that NYSE will require all organizations that currently are or propose to become NYSE member organizations to also be members of FINRA. It is also intended that FINRA will become the designated examining authority (“DEA”) for all NYSE member organizations.<sup>6</sup> So, for example, NYSE rules will provide that it will be a condition to purchase of a NYSE trading license that the organization is a member of FINRA.<sup>7</sup>

Most NYSE member organizations are already also members of NASD, and thus will automatically be members of FINRA. There are approximately 95 NYSE member organizations that are not currently NASD members, and these are the organizations that will be required to become FINRA members in order to remain NYSE member organizations, and remain entitled to utilize a NYSE trading license (“NYSE-only member organizations”).<sup>8</sup>

To address these changes, the Exchange proposes amending the definition of “member organization” in NYSE Rule 2(b). Under the Exchange’s current rules, NYSE Rule 2(b) defines the term “member organization” as a “registered broker or dealer (unless exempt pursuant to Securities Exchange Act of 1934) approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof.”<sup>9</sup>

<sup>5</sup> Pursuant to the Rule 17d-2 Agreement, NYSE and NASD will share responsibility for certain non-exclusive common rules, including rules relating to supervision, books and records, and conduct. See Securities Exchange Act Release No. 56148 (July 26, 2007).

<sup>6</sup> Historically, NYSE was the DEA for virtually all its member organizations. As part of the Transaction, it is contemplated that the Commission will name FINRA as the DEA for all the organizations for which NYSE was the DEA.

<sup>7</sup> NYSE has also allowed an organization to be an NYSE “regulation only” member without purchasing a trading license, if the organization qualifies and subjects itself to NYSE regulatory jurisdiction. After the Transaction, NYSE will continue to provide this status to an organization that is or becomes a FINRA member and subjects itself to NYSE jurisdiction, even though the organization does not have a NYSE trading license.

<sup>8</sup> NASD has filed with the Commission a rule filing to specify the terms on which these member organizations will be accommodated with FINRA membership. Pursuant to that proposed rule filing, NASD is proposing to establish Interpretive Material 1013-1 (“IM-1013-1”), which creates a membership waive-in process for NYSE-only member organizations, and Interpretive Material Section 4(e) to Schedule A of the NASD By-Laws, which creates a membership application fee waiver for those NYSE firms that apply for membership pursuant to IM-1013-1. See SR-NASD-2007-056.

<sup>9</sup> In 2006, in connection with the creation of NYSE Group, Inc., which is now known as NYSE

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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> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

<sup>4</sup> On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007).

The Exchange proposes to amend NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to retain for itself the discretion to deem an applicant unacceptable for NYSE membership, and is retaining Rule 308 (Acceptability Proceedings) for this purpose.

The Exchange recognizes that the proposed amendments to both the NYSE's and NASD's membership rules will not be approved as of the date of the closing of the Transaction and therefore, as of the closing of the Transaction, NYSE-only firms may not yet be approved FINRA members. Accordingly, the Exchange proposes that NYSE-only member organizations be provided a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed filing or NASD's proposed filing to amend its membership rules.

## 2. Statutory Basis

The Exchange states that the statutory basis for proposed rule change is the requirement under section 6(b)(5)<sup>10</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

Euronext, Inc., a publicly-traded corporation, the Exchange amended its rules to reflect the separation of trading privileges at the Exchange from equity ownership in the Exchange. Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR-NYSE-2005-77).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE 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-NYSE-2007-67 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-67. 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 a.m. and 3 p.m.

Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2007-67 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56181; File No. SR-NYSE-2007-70]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Gross FOCUS Fee

August 1, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 27, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On August 1, 2007, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 deleted a sentence in the statutory basis section of Exhibit 1 to the proposed rule change that was mistakenly included in the proposal and amended the Fee Schedule in Exhibit 5 to reference the file number of this proposal.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).