

is in the best interests of Applicant and its shareholders.

3. The amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of Applicant, except that if the amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options, and rights issued to Applicant's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of Applicant, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Applicant.

4. The maximum amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Applicant on the effective date of the Plan plus 10% of the number of shares of Applicant's common stock issued or delivered by Applicant (other than pursuant to compensation plans) during the term of the Plan.

5. The Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on Applicant's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan would not have an effect contrary to the interests of Applicant's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-4178 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [73 FR 10828, February 28, 2008].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** March 3, 2008 at 2 p.m.

**CHANGE IN THE MEETING:** Additional Item.

The following matter will also be considered during the 2 p.m. Closed Meeting scheduled for Monday, March 3, 2008:

An adjudicatory matter.

Commissioner Casey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: February 29, 2008.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8-4228 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-57393; File No. SR-Amex-2007-79]**

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Relating to Independent Directors and Audit Committee Members

February 27, 2008.

On September 18, 2007, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change relating to independent directors and audit committee members. On November 8, 2007 and November 16, 2007, Amex submitted Amendments No. 1 and 2, respectively, to the proposed rule change. The proposed

rule change as modified by Amendments No. 1 and 2 was published for comment in the **Federal Register** on December 27, 2007.<sup>3</sup> The Commission received no comments on the proposal. On February 14, 2008, Amex submitted Amendment No. 3 to the proposed rule change.<sup>4</sup>

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 and, in particular, the requirements of Section 6(b)(5) of the Act,<sup>5</sup> because it allows an issuer a reasonable period of time ("cure period") to fill a vacancy on its audit committee when the number of members on such committee has fallen below the minimum required by the Exchange's rules; and to restore the proportion of independent directors on its board to the level required by the Exchange's rules in a situation when a vacancy arises or an independent director ceases to be independent due to circumstances beyond his or her reasonable control.<sup>6</sup>

The Commission notes that the cure period established by the proposed rule change for issuers generally is consistent with the period provided in the rule of another exchange previously approved by the Commission.<sup>7</sup> Further, the Commission believes that the proposal appropriately adjusts the cure period for Small Business Issuers (as defined in Amex's rules) in view of the

<sup>3</sup> See Securities Exchange Act Release No. 56982 (December 18, 2007), 72 FR 73386 (December 27, 2007).

<sup>4</sup> Amendment No. 3 was a technical amendment not subject to notice and comment.

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

<sup>6</sup> The Commission notes that the proposed rule change does not affect the cure period afforded to an issuer for purposes of compliance with the Exchange's independence standards for audit committee members, including those required by Rule 10A-3 under the Act, 17 CFR 240.10A-3. The proposal rather relates to situations in which a vacancy arises on an issuer's audit committee, as, for example, in a case where a resignation or death causes the number of independent directors on the committee to fall below the minimum required by Amex's rules (two in the case of Small Business Issuers as defined in the Amex's rules and three for all other issuers). The proposal further relates to situations in which a vacancy arises on an issuer's board or an independent director on an issuer's board ceases to be independent due to circumstances beyond his or her reasonable control such that the issuer no longer meets the Amex standard requiring that a majority of directors on an issuer's board be independent (or 50% of the directors, in the case of Small Business Issuers).

<sup>7</sup> See NASDAQ Manual, Rule 4350(c) and (d). See Securities Exchange Act Release No. 54421 (September 11, 2006), 71 FR 54698 (September 18, 2006).

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

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

modified standards that Amex imposes on such issuers.<sup>8</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2007-79), as amended, be, and hereby is, approved.<sup>10</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4176 Filed 3-4-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57388; File No. SR-FINRA-2007-039]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto To Establish an Exemption for Certain Regulation NMS-Compliant Intermarket Sweep Orders From the Requirements in IM-2110-2 (Trading Ahead of Customer Limit Order) and Rule 2111 (Trading Ahead of Customer Market Orders)

February 27, 2008.

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 December 21, 2007, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by FINRA. On February 11, 2008, FINRA filed Amendment No. 1 to make certain clarifying changes to the description of the purpose of the proposed rule change. The Commission is publishing this notice to solicit comments on the

proposed rule change, as amended, from interested persons.

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

FINRA is proposing to amend NASD Interpretive Material (IM) 2110-2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) to establish an exemption for certain proprietary trades that are a result of intermarket sweep orders (“ISOs”). The text of the proposed rule change is available at <http://www.finra.org>, the principal offices of FINRA, and 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, FINRA 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. FINRA 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

IM-2110-2 (also referred to as the “Manning Rule”) generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.<sup>3</sup> The legal underpinnings for the Manning Rule are a member’s basic fiduciary obligations and the requirement that a member must, in the conduct of its business, “observe high standards of commercial honor and just

and equitable principles of trade.”<sup>4</sup> The same principles on which the Manning Rule is based apply to the treatment of customer market orders pursuant to Rule 2111, which generally prohibits a member that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order. The NYSE has similar customer order protections in NYSE Rule 92 (Limitations on Members’ Trading Because of Customers’ Orders), which generally prohibits members or member organizations from entering proprietary orders ahead of, or along with, customer orders that are executable at the same price as the proprietary order.<sup>5</sup>

On July 5, 2007, the SEC approved amendments to NYSE Rule 92 that, among other things, added an exemption relating to ISOs.<sup>6</sup> Specifically, as amended, NYSE Rule 92 provides that when routing ISOs, the member organization is required to yield its principal executions to those open customer orders that are required to be protected by NYSE Rule 92 and capable of accepting the fill.<sup>7</sup> In addition, if a firm executes an ISO to facilitate a customer order at a price that is inferior to one or more protected quotations, that customer must consent to not receiving the better price obtained by the ISO(s) or the firm must yield its principal execution to that customer.

FINRA is proposing to establish a similar exemption from the requirements in IM-2110-2 and Rule 2111 for certain Regulation NMS-compliant ISOs. Specifically, FINRA is proposing to amend IM-2110-2 and Rule 2111 to provide an exemption relating to trading for a member’s own account that is the result of an ISO routed in compliance with Rules

<sup>8</sup> The Commission notes that on January 25, 2008, Amex submitted File Number SR-Amex-2008-05 to further amend Amex corporate governance listing standards to conform to recent Commission amendments and forms relating to smaller reporting companies.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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> The SEC approved changes to IM-2110-2 that, among other things, expand the scope to OTC equity securities. See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (SR-NASD-2005-146). See also NASD *Notice to Members* 07-19 (April 2007). See also Securities Exchange Act Release Nos. 57133 (January 11, 2008), 73 FR 3500 (January 18, 2008) (SR-FINRA-2007-038); 56822 (November 20, 2007), 72 FR 67326 (November 28, 2007) (SR-FINRA-2007-023); 56297 (August 21, 2007), 72 FR 49337 (August 28, 2007) (SR-NASD-2007-041); 56103 (July 19, 2007), 72 FR 40918 (July 25, 2007) (SR-NASD-2007-039).

<sup>4</sup> See NASD Rule 2110.

<sup>5</sup> NYSE Rule 92 applies to customer orders and does not distinguish between customer limit orders and customer market orders.

<sup>6</sup> See Securities Exchange Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR-NYSE-2007-21).

<sup>7</sup> Pursuant to NYSE Rule 92, customer orders that are required to be protected are those open customer orders that are known to the member organization before the entry of the ISO. See NYSE Information Memo 07-68 (July 6, 2007).