

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58707; File No. SR-FINRA-2008-043]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Establish a Membership Waive-in Process and Fee Waiver for Certain NYSE Alternext U.S. LLC Member Organizations

October 1, 2008.

#### I. Introduction

On July 30, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 to establish a membership waive-in process and fee waiver for certain NYSE Alternext members. The proposed rule change was published for comment in the **Federal Register** on August 11, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

As discussed in a separate proposed rule change,<sup>4</sup> on January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger whereby, through a series of mergers ("Mergers"), NYSE Euronext will acquire the American Stock Exchange LLC ("Amex"). As a result of these Mergers, Amex will become a wholly-owned subsidiary of NYSE Group and renamed NYSE Alternext U.S. LLC ("NYSE Alternext").

As described in a separate filing,<sup>5</sup> the New York Stock Exchange LLC ("NYSE") intends to (1) require mandatory FINRA and NYSE membership for NYSE Alternext member organizations (other than those that exclusively trade options); (2) adopt a series of member conduct rules for NYSE Alternext member organizations

that are substantively identical to the Incorporated NYSE Rules that are the subject of an agreement among FINRA, NYSE, and NYSE Regulation, Inc., pursuant to Rule 17d-2 under the Act ("17d-2 Agreement"); and (3) amend the 17d-2 Agreement to include NYSE Alternext as a party to that agreement so that FINRA will assume regulatory responsibility consistent with the terms of that agreement for the NYSE Alternext Equities rules that are substantively identical to the Incorporated NYSE Rules.

In furtherance of these efforts, FINRA proposes a membership waive-in process for certain NYSE Alternext member organizations, similar to the process for NYSE member organizations.<sup>6</sup> Proposed IM-1013-2 would apply to any NYSE Alternext member organization that holds a valid 86 Trinity Permit<sup>7</sup> as of the date such firm transfers its equities operations to the NYSE Alternext trading systems at 11 Wall Street<sup>8</sup> and that is not currently a FINRA member.

FINRA recognizes that the Amex and NYSE have comprehensive membership applications and review processes based on similar principles and standards to that of FINRA. As such, those NYSE Alternext member organizations that will become FINRA members already have been subjected to an extensive screening process. The waive-in process would make each such firm eligible to automatically become a FINRA member and to automatically register all associated persons whose registrations are approved with NYSE Alternext in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("Department") of a signed waive-in

membership application ("Waive-In Application").<sup>9</sup>

Associated persons of the NYSE Alternext member organizations will be automatically registered with FINRA only for those registration categories that are recognized jointly by FINRA and NYSE Alternext—e.g., a General Securities Representative (Series 7); provided, however, that the firm must, upon approval of FINRA membership, submit an amended Form U4 for each such associated person, denoting the corresponding FINRA registration category(ies) for such person. A list of those registration categories is included as part of the Waive-In Application. For those associated persons registered in a category recognized only by NYSE Alternext, FINRA will acknowledge such registrations to permit such persons to continue to function in the capacity for which they are registered.

The Waive-In Application would require the following information:

- (1) General company information, including Central Registration Depository ("CRD") Number and contact person;
- (2) An attestation that all information on the applicant's CRD form, as of the date of submission of the Waive-In Application, is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines, and disclosures;
- (3) The identity of the firm's Executive Representative;
- (4) Completed and signed Entitlement Forms (unless previously submitted);
- (5) A signed FINRA Membership Agreement; and
- (6) Representations that the applicant's Uniform Application for Broker-Dealer Registration will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true, and complete.

The Waive-In Application must be received within three business days of receipt and, if complete, the Department

<sup>6</sup> FINRA previously established a waive-in process to expedite the approval of membership applications of NYSE-only member organizations that were required to become FINRA members. That process is set forth in IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations). See Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (SR-NASD-2007-056).

<sup>7</sup> An "86 Trinity Permit" will authorize any owner, lessee, or nominee of an Amex Regular Member or Options Principal Member ("OPM"); Amex limited trading permit holder; or Amex associate members who was authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York ("86 Trinity Trading Systems").

<sup>8</sup> In connection with the Mergers, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to 11 Wall Street, New York, New York. See Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR-Amex-2008-63).

<sup>9</sup> NYSE is proposing a 60-day grace period for such NYSE Alternext member organizations to apply for and be approved for FINRA membership. See Securities Exchange Act Release No. 58290, *supra* note 5. In coordination with this proposal and with respect to the requirement in Incorporated NYSE Rule 2, FINRA would permit a 60-day grace period within which these member organizations must apply for and be approved for FINRA membership. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext Trading Systems.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58291 (August 1, 2008), 73 FR 46661 (August 11, 2008) (SR-FINRA-2008-043).

<sup>4</sup> See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR-Amex-2008-62).

<sup>5</sup> See Securities Exchange Act Release No. 58290 (August 1, 2008), 73 FR 46676 (August 11, 2008) (SR-NYSE-2008-70).

would issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement would become effective on the date of such notification letter.

Any NYSE Alternext member organization admitted pursuant to proposed IM-1013-2, being a member organization of both NYSE and NYSE Alternext, would be subject to the consolidated FINRA rules,<sup>10</sup> the NYSE rules incorporated by FINRA,<sup>11</sup> the FINRA By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and NASD Rules 8000 (Investigations and Sanctions) and 9000 (Code of Procedure) series, provided that its NYSE or NYSE Alternext securities business is limited to floor-based activities in either NYSE-traded or NYSE Alternext-traded securities, or routing away to other markets orders that are ancillary to its core NYSE or NYSE Alternext floor business under NYSE Rule 70.40 or NYSE Alternext Equities Rule 70.40 ("permitted floor activities").<sup>12</sup>

If an NYSE Alternext member organization admitted pursuant to proposed IM-1013-2 seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm would become subject to all NASD Rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

Associated persons of an NYSE Alternext member organization admitted to FINRA pursuant to proposed IM-1013-2 would be subject to the same set of rules as the firm with

<sup>10</sup> FINRA is proposing that firms admitted to FINRA membership under IM-1013-1 be subject to the consolidated FINRA rules. See Securities Exchange Act Release No. 58206 (July 22, 2008), 73 FR 43808 (July 28, 2008).

<sup>11</sup> FINRA proposes to grant NYSE Alternext waive-in member organizations a six-month period to comply with Incorporated NYSE Rules 311-313.

<sup>12</sup> For purposes of this order, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded or NYSE Alternext-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations; or (ii) provided that the majority of transactions effected by the firm are effected on NYSE, sending to other markets orders in NYSE-traded, NYSE Alternext-traded, or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded or NYSE Alternext-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded or NYSE Alternext-traded securities.

which they are associated. Inasmuch as these associated persons would not be subject to NASD Rules 1021 or 1031, they would not be required to register in a registration category recognized by FINRA. To the extent that such persons continue to be associated solely with a firm whose business complies with the limitations imposed on those firms admitted to FINRA pursuant to proposed IM-1013-2, FINRA is not imposing any registration requirements beyond those required by the NYSE or NYSE Alternext, provided their business is confined in scope as contemplated in proposed IM-1013-2.<sup>13</sup>

Finally, FINRA proposes to amend Interpretive Material Section 4(b)(1) and 4(e) of Schedule A of the FINRA By-Laws to exempt NYSE Alternext applicants from the assessment of a FINRA membership application fee and from fees for each initial Form U4 filed by the applicant with FINRA for the registration of a representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to proposed IM-1013-2.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(2) of the Act,<sup>15</sup> which requires a national securities association to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act. Further, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>16</sup> in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in

<sup>13</sup> The licensing and other requirements applicable to the NYSE Alternext member organizations and their associated persons are subject to change as part of the process of establishing the Consolidated FINRA Rulebook.

<sup>14</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>15</sup> 15 U.S.C. 78o-3(b)(2).

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest.

The Commission has previously approved a similar waive-in process for NYSE members required to become FINRA members.<sup>17</sup> This proposal affords eligible NYSE Alternext members and member organizations with a similar expedited process to become FINRA members, provided that they engage in permitted floor activities only. The proposal appears reasonably designed to facilitate the consolidation of member firm regulatory functions of FINRA, NYSE, and NYSE Alternext, thereby encouraging more efficient regulation of members and their associated persons.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-FINRA-2008-043) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58665; File No. SR-ISE-2008-21]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to an Exchange Member's Conduct of Doing Business With the Public

September 26, 2008.

#### I. Introduction

On March 27, 2008, the International Securities Exchange, LLC ("ISE" or the "Exchange"), 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> filed with the Securities and Exchange Commission (the "Commission") the proposed rule change relating to the Exchange's rules governing doing business with the public. On July 9, 2008, the Commission issued a release noticing the proposed

<sup>17</sup> See Securities Exchange Act Release No. 56653, *supra* note 6.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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.