directors and in the administration of its affairs and will enable NSCC to act in a more expedient manner and therefore, to better promote the prompt and accurate clearing and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that NSCC's participants are fairly represented in the selection of its Board and in the administration of its affairs.[5] This rule change should not have any adverse effect on NSCC's participants' representation in the selection of NSCC's Board or in the administration of NSCC's affairs. The Commission also recognizes that it may benefit NSCC to have non-participants directors on its Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that NSCC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of NSCC's participants in the selection of its directors and administration of its affairs.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency are designed to promote the prompt and accurate clearing and settlement of securities transactions. The Commission finds that by providing its Board with additional authority to delegate certain of its responsibilities, such as, for example, responsibilities related to approving membership applications and other related matters, NSCC will be able to act in a more expedient manner and therefore, better able to promote the prompt and accurate clearing and settlement of securities transactions.

NSCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving NSCC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

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.* Please include File Number SR–NSCC–2009–10 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.

All submissions should refer to File Number SR–NSCC–2009–10. 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 Section, 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 NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009–10.pdf.* 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–NSCC–2009–10 and should be submitted on or before January 19, 2010.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2009–10) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30786 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

[5] *See, e.g.,* Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR–DTC–2005–16, SR FICC–2005–19, and SR–NSCC–2005–14).

[6] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61211; File No. SR–FINRA–2009–087]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2009, Financial Industry Regulatory

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

[2] 17 CFR 240.19b–4.

Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to repeal NASD Rule 2760 (Offerings ''At the Market''), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, 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

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to repeal NASD Rule 2760 (Offerings ''At the Market''), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5).[4] The proposed rule change is described in detail below.

NASD Rule 2760 (Offerings ''At the Market'')

NASD Rule 2760 provides that a member who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange shall make no representation that such security is being offered to a customer ''at the market'' or at a price related to the market price, unless the member knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by the member, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with the member.

When Rule 2760 was adopted,[5] its requirements duplicated those set forth in the SEC's early version of SEA Rule 15c1–8 (designated at the time of its adoption as Rule MC8).[6] Today, SEA Rule 15c1–8 is identical to its predecessor Rule MC8 except that it also applies to municipal securities dealers.[7] NASD Rule 2760 remains unchanged since its inception.

FINRA is proposing to delete NASD Rule 2760 from the FINRA rulebook because it duplicates SEA Rule 15c1–8. SEA Rule 15c1–8 explicitly makes it a manipulative, deceptive, or other fraudulent device or contrivance under Section 15(c) of the Exchange Act for a broker or dealer or municipal securities dealer who is participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange to make a representation to a customer that a security is being offered ''at the market'' unless certain conditions (identical to those required by NASD Rule 2760) are satisfied. FINRA believes the SEA rule appropriately protects investors without duplication by NASD Rule 2760. Therefore, FINRA considers the transfer of NASD Rule 2760 to the Consolidated FINRA Rulebook to be unnecessary.

NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities)

NASD Rule 2780 became effective in 1939, and its text has not been changed since its adoption. The rule essentially incorporated verbatim into the NASD rulebook SEA Rule 10b–2 (formerly Rule GB2), which was adopted by the SEC in 1937 to ''eliminate the practice of stimulating exchange activity in securities which are the subject of distribution.'' [8]

The rule prohibits a member that participates or is otherwise financially interested in a primary or secondary distribution of a security from paying or offering to pay compensation to another person for soliciting a purchase of any security of the issuer on a national securities exchange or for purchasing any such security for an account other than that of the member. The rule further prohibits a member from (1) selling or offering to sell or deliver such security where the member engaged in the aforementioned prohibited conduct or (2) causing the purchase or sale of such security by engaging in the prohibited conduct. Finally, the rule does not apply to any salary paid by a member to a person whose ordinary duties include the solicitation of orders on a national securities exchange, as long as the salary represents ordinary compensation and is not paid in whole or in part for the inducement of a purchase or sale of the security that is subject to the distribution of which the member is participating or financially interested.

The SEC rescinded SEA Rule 10b–2 in 1993 finding, among other things, that it was duplicative of other provisions of the federal securities laws that more effectively address manipulative practices. More specifically, the SEC noted that the general antifraud provisions, including Section 17(a) of the Securities Act and Sections 9(a), 10(b) and 15(c) of the Exchange Act and

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, Incorporated NYSE Rules generally are referred to as NYSE Rules.

[5] Rule 2760, formerly designated as Section 16 in Article III of the Rules of Fair Practice, was adopted in 1939 as part of FINRA's original rulebook. *See* Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

[6] *See* Securities Exchange Act Release No. 1330 (August 4, 1937).

[7] *See* Securities Exchange Act Release No. 12468 (May 20, 1976), 41 FR 22820 (June 7, 1976) (Regulation of Municipal Securities Professionals and Transactions in Municipal Securities). FINRA Rule 0150(b) (Application of Rules to Exempted Securities Except Municipal Securities) provides that FINRA's rules do not apply to transactions in, and business activities relating to, municipal securities.

[8] *See* Securities Exchange Act Release No. 1330 (August 4, 1937).

Rule 10b–5 thereunder proscribe manipulative practices effected on and off exchanges, and had been found to apply to the practices covered by SEA Rule 10b–2.[9] The SEC also noted in particular that SEA Rule 10b–6 addressed the manipulative activity covered by SEA Rule 10b–2. SEA Rule 10b–6 was the predecessor to current Regulation M. That regulation, among other things, prohibits underwriters, broker-dealers and other distribution participants, during a restricted period prior to the completion of their participation in a distribution of securities, from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase the offered security absent an available exception. Regulation M is designed to prohibit activities that could artificially influence the market for the offered security, including for example, supporting an IPO price by creating the perception of scarcity of IPO stock or creating the perception of aftermarket demand. Thus, FINRA believes that the conduct covered by Regulation M and NASD Rule 2780 are very similar.

In considering the provisions of NASD Rule 2780 today, FINRA sees no significant utility to the rule in light of the applicable federal securities laws and FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade) and 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices). Because the manipulative conduct contemplated by NASD Rule 2780 can be reached by Regulation M, the federal securities laws referenced above and FINRA Rules 2010 and 2020, FINRA proposes that the provisions of NASD Rule 2780 not be adopted into the Consolidated FINRA Rulebook and be deleted. NYSE Rule 2B (No Affiliation between Exchange and any Member Organization)

NYSE Rule 2B was adopted as part of the merger between the NYSE and Archipelago Holdings, Inc. The rule provides that, without prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, the rule states that a member organization shall not be or become an affiliate [10] of the Exchange, or an affiliate of any affiliate of the Exchange; provided, however, that, if a director of an affiliate of a member organization serves as a director of NYSE Euronext, this fact shall not cause such member organization to be an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange. The rule further provides that nothing in the rule shall prohibit a member organization from acquiring or holding an equity interest in NYSE Euronext that is permitted by the ownership limitations contained in the certificate of incorporation of NYSE Euronext.[11] There is no comparable NASD rule.

The rule was adopted to address concerns by the SEC regarding the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[12]

The NYSE has subsequently amended its version of Rule 2B in response to concerns by the SEC regarding certain other of its affiliate relationships.[13] FINRA did not make conforming amendments to its version of Rule 2B since the NYSE's changes addressed specific arrangements between the NYSE and its affiliates in its capacity as an exchange.

FINRA is proposing to delete NYSE Rule 2B from the FINRA rulebook. This rule specifically addresses relationships between the Exchange and its affiliates. The SEC's concerns regarding potential conflicts of interest and unfair competitive advantage in affiliate relationships between an exchange and a member are not applicable to FINRA because it does not operate as an exchange. As such, FINRA considers the transfer of NYSE Rule 2B to the Consolidated FINRA Rulebook to be unnecessary. NYSE Rule 411 (Erroneous Reports)

NYSE Rule 411 addresses three separate issues. First, paragraph (a) of the rule addresses situations where a member has rendered a report that differs from the terms of an executed trade. Second, paragraph (b)(1) sets forth a member's obligations when handling separate odd-lot orders. Third, paragraph (b)(2) requires members to record securities transactions in accounts no later than settlement date. Each of these provisions is discussed separately below.

(1) NYSE Rule 411(a): Erroneous Reports

NYSE Rule 411(a)(i) provides that the price and size of an ''actual auction market trade'' are binding, notwithstanding that the customer has received an erroneous report with respect to the terms of the trade.[14] Because some customers may not want corrected reports offered by a member that has rendered an erroneous report, the rule includes two alternative approaches in cases where the wrong price and/or size has been reported to the customer.[15] Under the first alternative, the customer may take the actual terms of the auction market trade, and the trade clears and settles in accordance with the terms of the auction market trade. Under the second alternative, the customer may treat the terms of the erroneous report as though they were the terms of the actual auction market trade, provided certain conditions are met, and the member may treat the erroneous report as an erroneous trade, assuming any losses or paying any profit to the New York Stock Exchange Foundation.[16] NYSE Rule 411(a)(iii) provides that a report is not binding and must be rescinded if an order was not actually executed but was erroneously reported as having been executed. An order that was executed, but was erroneously reported as not having been executed, is binding. Finally, NYSE Rule 411(a)(iv) includes a provision addressing erroneous reports by floor brokers involving ''not held'' orders.

(2) NYSE Rule 411(b)(1): ''Bunching'' Odd-Lot Orders

NYSE Rule 411(b)(1) includes two separate provisions regarding the

[9] *See* Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[10] The rule provides that the term ''affiliate'' shall have the meaning specified in SEA Rule 12b–2. *See* 17 CFR 240.12b–2.

[11] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (Approval Order; File No. NYSE–2006–120) (Amendments to Rule 2B relating to the combination of NYSE Group, Inc. and Euronext N.V.).

[12] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (Approval Order; File No. SR–NYSE–2005–77).

[13] *See* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (Approval Order; File No. SR–NYSE–2008–122). *See also e.g.,* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (Approval Order; File No. SR–NYSE–2008–120).

[14] *See* NYSE *Information Memo* 01–38 (November 6, 2001).

[15] NYSE members and member organizations must always accept a corrected report. *See* NYSE *Information Memo* 02–07 (February 5, 2002).

[16] The NYSE has adopted an Interpretation to paragraph (a)(ii)(5) regarding the calculation of profits in these circumstances. Although the interpretation relates to NYSE Rule 411(a)(ii)(5), this Interpretation appears in the Transitional Rulebook and in NYSE's Rulebook under NYSE Rule 410. FINRA is proposing to delete the Interpretation and not include it in the Consolidated FINRA Rulebook.

aggregation of multiple odd-lot orders. First, the rule prohibits a member from combining orders given by different customers to buy or sell odd-lots of the same stock into a round-lot order without the prior approval of the customers. Second, the rule states that when a customer ''gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate 100 shares or more,'' the member may not accept the orders unless they are, as far as possible, consolidated into round lots, except that orders marked ''long'' need not be consolidated with selling orders marked ''short.'' An exception from the consolidation requirement is available once per trading day by a person exercising investment discretion over multiple accounts if the odd-lot orders, in the aggregate, total fewer than 300 shares.

(3) NYSE Rule 411(b)(2): Recording of Transactions in Accounts

NYSE Rule 411(b)(2) requires that transactions in securities be recorded in accounts no later than settlement date. The rule originally was intended to ensure that interest was properly posted for each transaction and required that transactions be recorded and interest be computed as of settlement date.[17] The NYSE amended the rule into its current form in 1982 to remove the language regarding the calculation of interest and to permit firms to record securities transactions at any time prior to settlement date.[18]

FINRA is proposing not to incorporate NYSE Rule 411 or the Interpretation to NYSE Rule 411(a)(ii)(5) into the Consolidated FINRA Rulebook. The provisions in the rule related to erroneous reports are specific to the NYSE marketplace, and certain of the provisions relate solely to transactions by floor brokers. Paragraph (b)(1), which is related to the ''bunching'' of odd-lot orders, is similarly focused on the NYSE marketplace, which maintains a separate system for the execution of odd-lot orders.[19] Because FINRA does not maintain a marketplace, a rule addressing the aggregation of orders for execution is unnecessary.[20] Finally, FINRA is proposing that NYSE Rule 411(b)(2) not be included in the Consolidated FINRA Rulebook because the rule is duplicative of existing SEC recordkeeping requirements and longstanding SEC guidance.[21]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would streamline and improve FINRA's rulebook by eliminating rules that are duplicative of federal rules and regulations and provisions that are specific to the NYSE and its marketplace.

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

FINRA 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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 self-regulatory organization 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. Please include File Number SR–FINRA–2009–087 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.

All submissions should refer to File Number *SR–FINRA–2009–087.* 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,[23] 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 the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

[17] *See* Securities Exchange Act Release No. 18644 (April 14, 1982), 47 FR 17701 (April 23, 1982) (Notice of Filing; File No. SR–NYSE–82–7).

[18] *See* Securities Exchange Act Release No. 18778 (May 28, 1982), 47 FR 24900 (June 8, 1982) (Approval Order; File No. SR–NYSE–82–7).

[19] *See* NYSE Rule 124 (Odd-Lot Orders). FINRA did not incorporate NYSE Rule 124 into the Transitional Rulebook because it is solely concerned with the NYSE marketplace.

[20] Although FINRA does not have a rule addressing the bunching of odd-lot orders, FINRA's trade reporting rules have separate reporting requirements for round-lot and odd-lot transactions. In addition, the aggregation of individual executions (both round-lot and odd-lot executions) for trade reporting purposes is prohibited. *See, e.g.,* FINRA Rules 6282(f), 6380A(f), 6380B(h).

[21] *See* 17 CFR 240.17a–3(a)(3); *see also* Securities Exchange Act Release No. 10756 (April 26, 1974) (''Transactions involving the purchase and sale of securities should be posted to the customer's ledger accounts * * * no later than settlement date.'').

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–087 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30784 Filed 12–28–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61226; File No. SR–CTA/CQ–2009–02]

Consolidated Tape Association; Order Approving the Thirteenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and Seventh Charges Amendment to the Restated Consolidated Quotation Plan

December 22, 2009.

I. Introduction

On October 19, 2009, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] proposals[4] to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[5] The proposals would: (1) delete all program classification charges from the schedules of Network A and Network B computer input charges; and (2) replace the current combined Network A/Network B high speed line access charges with separate high speed line access charges for Network A and Network B. The proposed amendments to the Plans were published for comment in the **Federal Register** on November 19, 2009.[6] No comment letters were received in response to the Notice. This order approves the proposed amendments to the Plans.

II. Description of the Proposal

The Plans currently divide the different means of using market data into eight ''program classifications.'' The program classification fees payable by vendors and end-users depend on the category of use the vendor or end-user makes of the data and whether the vendor or end-user is using Network A market data or Network B market data, or both. Through the amendments to the Plans, the Participants proposed to eliminate program classification charges and set separate fees for the receipt of Network A market data and Network B market data.

The Participants stated that over time, new technologies and new and innovative ways to use market data have made it increasingly difficult to fit the data uses into the existing program classifications in a manner that is consistent and equitable for all. Therefore, the Participants concluded that it is more equitable to charge vendors and end-users for the method of access to the data and the quantity of usage, rather than for the specific purposes (*i.e.,* by program classification) to which vendors and end-users put market data. The elimination of program classification charges means that vendors will no longer need to provide detailed explanations of how they use the data or to update Exhibit A to their agreements with the Participants each time they use data in a new way.

Additionally, the Participants proposed to revise the access fees by setting separate fees for the receipt of Network A market data and Network B market data. Therefore, if a vendor or end-user wishes to receive Network A last sale prices (or quotation information), but not Network B last sale prices (or quotation information), the vendor or end-user would be allowed to pay only for Network A last sale prices, without also having to pay for Network B last sale prices and vice versa.

In addition to establishing separate access fees for Network A and Network B, the Participants stated that they intend to set the new access fees at levels that will offset the revenues that the Participants anticipate losing as a result of eliminating the program classification fees.

III. Discussion

After careful review, the Commission finds that the proposed amendments to the Plans are consistent with the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the amendments are consistent with Rule 608(b)(2)[8] of the Act in that they are necessary for the protection of investors, the maintenance of fair and orderly markets, and to remove impediments to a national market system. The Commission believes that eliminating program classification charges and replacing them with separate fees for the receipt of Network A and Network B market data are fair and reasonable and provide for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A and Network B facilities. The Commission agrees that charging users of data based on their method of access to the data and the amount of data they use rather than basing charges on the way vendors or end users use the data should simplify the rate schedule, remove subjectivity from the billing process, simplify and reduce the costs of data administration, and give choice to data vendors and end-users who prefer to receive data from one network only. Further, according to the Participants' estimates, the vast majority of vendors and end-users would realize net monthly increases or decreases of less than $1,000.[9] Thus, the proposed amendment is consistent with, and would further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii)[10] of the Act—increasing the availability of market information to broker-dealers and investors.

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[24] 17 CFR 200.30–3(a)(12).

[1] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] On November 6, 2009, the Consolidated Tape Association sent a revised transmittal letter correcting the number of the proposed amendment (''Transmittal Letter'').

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 60985 (November 10, 2009), 74 FR 59999 (''Notice'').

[7] In approving this amendment, the Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 242.608(b)(2).

[9] *See* the Transmittal Letter.

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).