

Securities and Exchange Commission,  
100 F Street, NE., Washington, DC  
20549-1090.

All submissions should refer to File Number SR-BX-2010-015. 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 Web site viewing and printing 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 the self-regulatory organization. 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-BX-2010-015 and should be submitted on or before March 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61556; File No. SR-NYSEAmex-2010-13]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NYSE Amex LLC Changing Certain NYSE Amex Equities Rules To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

February 22, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 16, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes changes to certain NYSE Amex Equities Rules to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>4</sup> The Exchange proposes to apply these changes retroactively to February 8, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 purpose of the proposed rule changes is to adopt changes to certain NYSE Amex Equities Rules to correspond with rule changes filed by FINRA and approved by the Commission. The Exchange proposes to apply these changes retroactively to February 8, 2010, the same effective date for FINRA's rule changes.<sup>5</sup> The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and Exchange Rules and that, as applicable, Exchange Rules maintain their status as Common Rules under the 17d-2 Agreement.<sup>6</sup>

##### 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 Rule 17d-2 under the Act,<sup>7</sup> the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "17d-2 Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the 17d-2 Agreement effective December 15, 2008.<sup>8</sup>

<sup>5</sup> See FINRA Regulatory Notice 09-71 (December 7, 2009).

<sup>6</sup> As provided in paragraph 2(b) of the 17d-2 Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

<sup>7</sup> 15 U.S.C. 78a, *et seq.*

<sup>8</sup> See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the 17d-2 Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054) (order approving the incorporation of

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (order approving SR-FINRA-2008-067). FINRA also recently filed for immediate effectiveness to (i) adopt non-substantive technical changes to consolidated FINRA Rule 4521(d), and (ii) amend FINRA Incorporated NYSE Rule 312(g). See Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010) (SR-FINRA-2010-004). See also SR-FINRA-2010-008, filed on February 4, 2010. These changes are incorporated in this rule filing.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex 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.<sup>9</sup>

Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA recently adopted consolidated FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) as part of its rule set governing financial responsibility of member firms. FINRA also amended consolidated FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), as well as Section 4(g) of Schedule A of the FINRA By-Laws to reflect the adoption of the new Rules.<sup>10</sup>

Because they are incorporated with or replaced by these new consolidated FINRA Rules, FINRA also deleted and/or amended certain FINRA Incorporated NYSE Rules and Rule Interpretations, including 312(g)–(h) (Changes Within Member Organizations), 313(d) (Submission of Partnership Articles—Submission of Corporate Documents), 313(d)/01 –/02 (Opinion of Counsel), 325 (Capital Requirements Member Organizations), 325(c)(1)/01 (Long Put or Call Options), 326(a) (Growth Capital Requirement), 326(b) (Business Reduction Capital Requirement), 326(c) (Unsecured Loans and Advances),

326(d) (Reduction of Elimination of Loans and Advances), 328 (Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements), 416.20 (Questionnaires and Reports), 416/01 (Gold and Silver Offerings), 418 (Audit), 420 (Reports of Borrowings and Subordinate Loans For Capital Purposes) and 421 (Periodic Reports).<sup>11</sup>

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete and/or amend Rules 312(g)–(h)-, 313(d)-, 325-, 326(a)–(d)-, 328-, 416.20-, 418-, 420- and 421- NYSE Amex Equities, and replace them with proposed Rules 4110-, 4120-, 4130-, 4140- and 4521- NYSE Amex Equities, which are substantially similar to the new FINRA Rules.<sup>12</sup>

As proposed, Rules 4110-, 4120-, 4130-, 4140- and 4521- NYSE Amex Equities adopt the same language as the corresponding consolidated FINRA Rules, except for substituting for or adding to, as needed, the term “Exchange” for “FINRA” and the term “member organization” for the term “member”, and making corresponding technical changes that reflect the difference between NYSE Amex’s and FINRA’s membership structures.

In addition, the Exchange proposes other changes to the NYSE Amex Equities version of the Rules in order to apply them to the Exchange. First, in proposed Rules 4110(a)- and 4140(a)- NYSE Amex Equities, the Exchange proposes to amend FINRA’s version of the Rules referring to “FINRA’s Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate,” to remove this language as it is inapplicable to the Exchange. As amended, the Exchange would retain the flexibility to arrange to have FINRA conduct the actual oversight and application of the proposed Rules pursuant to the 17d–2 Agreement or a

Regulatory Services Agreement as warranted.

Second, in proposed Rules 4110-, 4120- and 4130- NYSE Amex Equities, the Exchange proposes to add cross-references to NYSE Amex Disciplinary Rule 475. Similar to FINRA Rule 9557, NYSE Amex Disciplinary Rule 475 provides the Exchange with the ability to take summary action against a member or member organization that is facing financial or operational difficulties subject to certain due process considerations, including notice and an opportunity to be heard. The Exchange believes it should retain its current disciplinary procedures for addressing non-FINRA members and member organizations that face financial or operational difficulties.

Finally, in proposed Rules 4140(b)- and 4521(e)- NYSE Amex Equities, the Exchange proposes to amend the language from FINRA’s version of the Rules referring to Schedule A, Section 4(g) of the FINRA By-Laws to simply incorporate the language of Section 4(g) into the NYSE Amex Equities version of the Rules. Accordingly, proposed Rules 4140(b)- and 4521(e)- NYSE Amex Equities specify that member organizations that fail to timely file any report, notification or information pursuant to those Rules will be subject to a late fee of \$100 per day, for a period not to exceed 10 business days. Under the proposed Rules, requests for an extension of time must be submitted at least three business days prior to the due date of the report, notification or information required to be provided.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed 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 general, to protect investors and the public interest. The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange Equities Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members. To the extent the Exchange has proposed

certain NYSE Rules as “Common Rules”); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated 17d–2 Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

<sup>9</sup> 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 (“Common Members”), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

<sup>10</sup> See Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). See also SR–FINRA–2010–008, filed on February 4, 2010.

<sup>11</sup> FINRA deleted references to FINRA Incorporated NYSE Rules 313.14 (A–B–C agreements) and 313.18 (Sole board member provision) as part of its clean-up of Rule 313. See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009). Rule 313—NYSE Amex Equities does not have these references.

FINRA also deleted certain FINRA Incorporated NYSE Rule Interpretations. See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009). The Exchange has not adopted a corresponding version of the NYSE Rule Interpretations and so those rule changes are not applicable to the Exchange and are not included in this filing.

<sup>12</sup> NYSE has submitted a companion rule filing amending its rules in accordance with FINRA’s rule changes. See SR–NYSE–2010–10.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed rules. The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and NYSE Amex Equities Rules and that, as applicable, the NYSE Amex Equities Rules maintain their status as Common Rules under the 17d-2 Agreement.

#### *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*

No written comments were solicited or received with respect to the proposed rule change.

### III. 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-Amex 2010-13 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-NYSEAmex-2010-13. 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 Web site viewing and printing, in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEAMEX-2010-13 and should be submitted on or before March 23, 2010.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> and Section 6(b)(5) in particular, in that it is designed 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 general, to protect investors and the public interest<sup>16</sup> because the proposal will promote harmonization between the Exchange Equities Rules and FINRA Rules, resulting in less burdensome and more efficient regulatory compliance for Common Members. The Commission also believes that the Exchange's proposal to retroactively apply the proposed rule change to February 8, 2010 is consistent with the requirements of the Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder applicable to a national securities exchange<sup>18</sup> because: (1) The proposed rule changes will become operative and effective at the same time as FINRA's rule changes; (2) there will be no regulatory gaps between the FINRA and NYSE Amex Equities Rules; and (3) that, as applicable, the NYSE Amex Equities

Rules will maintain their status as Common Rules under the 17d-2 Agreement. The Commission believes that these factors will further promote regulatory compliance and efficiency.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission believes that good cause exists for accelerated approval of the proposed rule change because it raises no novel issues and is consistent with the FINRA rule filings previously approved by or filed with the Commission on which it is based.<sup>19</sup> Except as has been specifically noted and subject to a number of technical changes necessary to apply the Rules to the Exchange, the proposed rule changes will conform certain NYSE Amex Equities Rules and Rule Interpretations to FINRA's amendments to corresponding FINRA Incorporated NYSE Rules and Rule Interpretations and FINRA's adoption of consolidated FINRA Rules 4110, 4120, 4130, 4140 and 4521 in furtherance of the consolidation of the member firm regulation functions of NYSE and FINRA. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change, (SR-NYSEAmex-2010-13), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-4229 Filed 3-1-10; 8:45 am]

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<sup>15</sup> See 78f(b).

<sup>16</sup> See 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 78c(f).

<sup>19</sup> See Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). See also SR-FINRA-2010-008, filed on February 4, 2010.

<sup>20</sup> See 15 U.S.C. 78s(b)(2).

<sup>21</sup> See *id.*

<sup>22</sup> 17 CFR 200.30-3(a)(12).