

responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>7</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>8</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>9</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are members of more than one

<sup>7</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>8</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>9</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

Party to the proposed 17d-2 Plan. Pursuant to the proposed 17d-2 Plan, the Designated Regulation NMS Examining Authority ("DREA") would assume examination and enforcement responsibilities for broker-dealers that are members of more than one Participating Organization ("Common Members") with respect to certain applicable laws, rules, and regulations. FINRA would serve as the DREA for Common Members that are members of FINRA. The DEA would serve as the DREA for Common Members that are not members of FINRA.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "Covered Regulation NMS Rules") that lists the Federal securities laws, rules, and regulations, for which the DREA would bear responsibility under the Plan for overseeing and enforcing with respect to Common Members.

Specifically, under the 17d-2 Plan, the DREA would assume examination and enforcement responsibility relating to compliance by Common Members with the Covered Regulation NMS Rules. Under the Plan, each Participating Organization would retain full responsibility for examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace, unless otherwise allocated pursuant to a separate Rule 17d-2 agreement.<sup>10</sup>

## III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>11</sup> and Rule 17d-2(c) thereunder<sup>12</sup> in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to the DREA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by each Party.<sup>13</sup>

<sup>10</sup> See Paragraph 1 of the proposed 17d-2 Plan; see e.g., Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4-566) (notice of filing of proposed insider trading plan) and Securities Exchange Act Release No. 58536 (September 12, 2008) (File No. 4-566) (order approving and declaring effective the plan).

<sup>11</sup> 15 U.S.C. 78q(d).

<sup>12</sup> 17 CFR 240.17d-2(c).

<sup>13</sup> Paragraph 1 of the Plan provides that whenever a Common Member ceases to be a member of its DREA, the DREA shall promptly inform the

Accordingly, the proposed Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed Plan, the Plan should promote investor protection.<sup>14</sup>

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 22 of the Plan and must be filed with and approved by the Commission before it may become effective.<sup>15</sup>

## IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-618. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-618 is hereby approved and declared effective.

It is further ordered that the Parties who are not the DREA as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member's DREA under the Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63418; File No. SR-NYSEAmex-2010-108]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Market and Stop Orders in Nasdaq-Listed Securities Traded on the Exchange

December 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

Common Member's DEA, which will become such Common Member's DEA.

<sup>14</sup> See, e.g., Paragraph 7 of the Plan (Sharing of Work Papers, Data and Related Information) and Paragraph 5 (sharing of customer complaints).

<sup>15</sup> See Paragraph 22 of the Plan.

<sup>16</sup> 17 CFR 200.30-3(a)(34).

“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 22, 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 and II below, which Items have been 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 Exchange proposes to amend Rule 501—NYSE Amex Equities to eliminate Market and Stop Orders in Nasdaq-listed securities traded on the Exchange. The text of the proposed rule change is available at the Exchange’s principal office, 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 self-regulatory organization 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 this proposed rule change is to amend Rule 501—NYSE Amex Equities to eliminate Market and Stop Orders in Nasdaq-listed securities traded on the Exchange.

##### Background

Rules 500–525—NYSE Amex Equities, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges (“UTP Pilot Program”).<sup>3</sup> The UTP Pilot Program

includes any security listed on Nasdaq that (i) is designated as an “eligible security” under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (“UTP Plan”),<sup>4</sup> and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the “Act”).<sup>5</sup> (collectively, “Nasdaq Securities”).<sup>6</sup>

#### Rule 501—NYSE Amex Equities (Definitions)

Rule 501—NYSE Amex Equities provides certain defined terms, the meanings of which are applicable for trading in Nasdaq Securities. All other defined terms used in Rules 500–525—NYSE Amex Equities have the meanings assigned to them in the NYSE Amex Equities Rules. Rule 501(e)(2)—NYSE Amex Equities lists specific order types that are not accepted for trading in Nasdaq Securities and are therefore not considered “Orders” under the UTP Pilot Program. The Exchange proposes to include “Market Orders” and “Stop Orders” within Rule 501(e)(2)—NYSE Amex Equities, therefore eliminating submission of such order types in Nasdaq Securities and likewise excluding them from the definition of Order under the UTP Pilot Program.

and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Program that Allows Nasdaq Stock Market Securities to be Traded on the Exchange Pursuant to UTP). See also Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31) (Notice of Filing of Amendment Nos. 2 and 3, and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Adopt as a Pilot Program a New Rule Series for the Trading of Securities Listed on the Nasdaq Stock Market Pursuant to Unlisted Trading Privileges) (“UTP Pilot Program Approval Order”).

<sup>4</sup> See Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (Notice of Filing and Immediate Effectiveness of Amendment No. 20 to the UTP Plan). The Exchange’s predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

<sup>5</sup> 15 U.S.C. 78l.

<sup>6</sup> “Nasdaq Securities” is included within the definition of “security” as that term is used in the NYSE Amex Equities Rules. See NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an “issued,” “when issued,” or “when distributed” basis. See NYSE Amex Equities Rule 501.

#### Market and Stop Orders in Nasdaq Securities

Currently, if the Exchange is at the National Best Bid or Offer (“NBBO”), a Market Order submitted in a Nasdaq Security will execute against available contra-side liquidity at that best price. If size remains unfilled, and another market is similarly at the NBBO, the Market Order will route for execution against the away market’s protected bid or offer, in accordance with Rule 611 of Regulation NMS.<sup>7</sup> If size still remains unfilled after routing, the Market Order will return to the Exchange and execute against the depth of the Exchange’s book, until it is either fully executed or available liquidity on the Exchange is depleted. The Exchange notes that, as provided under Rule 501(e)(1)(B)—NYSE Amex Equities, a Stop Order to buy (sell) becomes a Market Order, and is treated as such for purposes of execution and routing, when a transaction in the Nasdaq Security occurs on the Exchange at or above (below) the stop price after the order is received in to the Exchange’s automated order routing system or is manually represented by a Floor broker in the Crowd.

Nasdaq Securities are thinly traded on the Exchange, which is not the primary listing market, and account for less than 1% of total volume in such securities across all markets. This lack of depth in liquidity combined with the manner in which Market Orders (and Stop Orders that become Market Orders) in Nasdaq Securities execute, route and re-execute at the Exchange, creates the potential for multiple rapid executions on the Exchange at increasingly inferior prices, until the Market Order (or Stop Order that becomes a Market Order) is fully executed. Submission of a large Market Order in a Nasdaq Security that results in several executions on the Exchange at increasingly inferior prices could potentially trigger individual stock volatility trading pauses,<sup>8</sup> raise questions of whether the execution should be busted under the Exchange’s clearly erroneous rule<sup>9</sup> or create other

<sup>7</sup> 17 CFR 242.611. A protected bid or protected offer means a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57).

<sup>8</sup> See Rule 80C—NYSE Amex Equities (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility).

<sup>9</sup> See Rule 128—NYSE Amex Equities (Clearly Erroneous Executions For NYSE Amex Equities).

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

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

<sup>3</sup> The UTP Pilot Program is currently scheduled to expire on the earlier of Commission approval to make such pilot permanent or January 31, 2011. See Securities Exchange Act Release No. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89) (Notice of Filing

potentially harmful market-wide implications.

This is not a concern with respect to trading Exchange-Listed Securities because of the operation of Liquidity Replenishment Points ("LRPs").<sup>10</sup> LRPs are pre-determined price points that temporarily convert the automatic Exchange market to an auction market when it is experiencing a large price movement based on a security's typical trading characteristics or market conditions over short periods of time during the trading day. LRPs work to dampen volatility and allow the Designated Market Maker ("DMM") assigned to such security to solicit additional liquidity. However, LRPs are not applicable to trading in Nasdaq Securities, and are therefore unavailable as a means to impede or prevent these multiple rapid executions at increasingly inferior prices. The Exchange believes that the elimination proposed herein is an appropriate measure to reduce the potential for erroneous executions and individual stock volatility trading pauses in Nasdaq Securities until such time as other volatility curbs are in place.

The Exchange believes that the elimination of Market and Stop Orders in Nasdaq Securities would not hinder the ability of members and member organizations to seek execution of their orders. On average, only 113 Market Orders and 27 Stop Orders in Nasdaq Securities are submitted to the Exchange each trading day, accounting for less than 0.0060% and 0.0014%, respectively, of the Exchange's 1,971,439 average daily orders in Nasdaq Securities. Upon implementation of the proposed rule change, members and member organizations could continue to utilize several other existing order types, under Rule 13—NYSE Amex Equities, for execution of their orders. The Exchange believes that, despite the relative infrequency in which they are submitted, the potentially harmful regulatory effects created by Market Orders (and Stop Orders that become Market Orders) in Nasdaq Securities requires that they be eliminated on the Exchange.

Accordingly, the Exchange proposes to eliminate the ability to enter Market and Stop Orders. As proposed, an order in a Nasdaq Security would be systematically rejected if submitted as a Market or Stop Order. A member or member organization whose Market or Stop Order is rejected would be required to re-submit the order to the Exchange, if it all, as one of several

permissible order types provided under Rule 13—NYSE Amex Equities.

#### *Rule 501(e)(1)(B)—Stop Order*

The proposed inclusion of Stop Orders within Rule 501(e)(2)—NYSE Amex Equities would require that Rule 501(e)(1)(B)—NYSE Amex Equities be deleted. Rule 501(e)—NYSE Amex Equities modifies the meaning of certain order types, including Stop Orders, as these terms are defined under Rule 13—NYSE Amex Equities. Because the Exchange proposes to no longer accept Stop Orders for trading in Nasdaq Securities, a modified definition thereof is no longer necessary or appropriate. The Exchange therefore proposes to delete Rule 501(e)(1)(B)—NYSE Amex Equities in its entirety.

The Exchange will implement the system changes to no longer accept Stop and Market Orders on or about December 6, 2010, but in no event, any later than December 13, 2010, and will notify market participants in advance when the change will be implemented.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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. Specifically, the changes proposed herein would contribute to improving the quality of executions in Nasdaq Securities on the Exchange and avoiding executions of Nasdaq Securities at inferior prices.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can eliminate market and stop orders in Nasdaq-listed securities traded on the Exchange immediately. The Exchange has represented that the elimination of market and stop orders in Nasdaq-listed securities should lessen the potential for multiple rapid executions on the Exchange at inferior prices as a result of the lack of depth in liquidity for Nasdaq-listed securities on the Exchange, and should therefore reduce the potential for erroneous executions and individual stock volatility trading pauses in Nasdaq-listed securities. In light of the benefits afforded by this reduced potential, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### 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.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> See Rule 1000(a)(iv)—NYSE Amex Equities.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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-NYSEAmex-2010-108 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-2010-108. 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 Exchange. 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-2010-108 and should be submitted on or before December 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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**BILLING CODE 8011-01-P**

<sup>16</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63425; File No. SR-NASDAQ-2010-156]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rules 2270 and 2910 To Reflect Changes to Corresponding FINRA Rule**

December 3, 2010.

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 1, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange is filing this proposed rule change to amend NASDAQ Rules 2270 and 2910 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). NASDAQ proposes to implement the proposed rule change immediately. [sic] The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at the Exchange's principal office, 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 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 these 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 aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. NASDAQ proposes to update its rules to reflect changes [sic] NASDAQ Rules 2270 and 2910 which corresponds to FINRA Rule 2261.

NASDAQ Rule 2270 (Disclosure of Financial Condition to Customers) and NASDAQ Rule 2910 (Disclosure of Financial Condition to Other Members) formerly corresponded to NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members). In SR-FINRA-2009-081,<sup>4</sup> FINRA re-designated NASD Rules 2270 and 2910 as FINRA Rule 2261 and made substantive amendments to strengthen and simplify the rules.

More specifically, the current NASDAQ Rule 2270, which incorporates NASD Rule 2270 by reference, requires that the members make information relative to a member's financial condition, as disclosed in its most recent balance sheet, available for inspection by any bona fide regular customer upon request. In FINRA SR-2009-081, [sic] FINRA provided members the option of delivering their balance sheet, in paper or electronic form, to customers who request it. Additionally, if the delivery is electronic, the requesting customer must provide consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer.

This proposed filing also addresses NASDAQ Rule 2910, which compares to the former NASD Rule 2910. NASDAQ Rule 2910 requires that any member that is a party to an open transaction or who

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 61540 (February 18, 2010), 75 FR 8771 (February 25, 2010) (SR-FINRA-2008-081).