

has implicitly approved such processes in the options markets by allowing certain price improvement auctions to exist pursuant to pilot programs, which auctions provide the ability of an options member to submit a customer order along with a contra-side principal order from the options member into a brief price improvement auction in which all members have the ability to compete for the execution.<sup>13</sup> BATS' proposed rule changes are similar in nature to these price improvement auctions, except that under BATS' proposal, competition for the execution with a Directed Order occurs in the context of BATS' continuous, price/time priority auction, rather than during a separate, one-second price improvement auction. As such, concerns about customer orders potentially "missing the market" during that exposure period are not present. That said, however, BATS has proposed to the Commission price improvement data and other data deemed necessary to evaluate the impact of the proposal. Also, as previously mentioned, BATS' proposal differs from existing price improvement auctions due to the fact that BATS Options Market Makers would have no participation guarantees.

The Exchange notes market makers already retain the discretion to pay certain firms non-transparent payment for order flow amounts. The proposal similarly retains that existing discretion for market makers, but provides a mechanism for such payments, or at least a portion of such payments, to be provided in a transparent fashion to the Directed Order in the form of price improvement over the NBBO.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the 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, as modified by Amendment No.1, 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-BATS-2011-009 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-BATS-2011-009. 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 such 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-BATS-2011-009 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-7688 Filed 3-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64130; File No. SR-NYSEAmex-2011-17]

**Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rule 346—NYSE Amex Equities and Adopting New Rule 3270—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.**

March 28, 2011.

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 March 14, 2011, NYSE Amex LLC (the "SRO" 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 substantially prepared by the SRO. 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 SRO proposes to delete Rule 346—NYSE Amex Equities and adopt new Rule 3270—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Securities and Exchange

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<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>13</sup> See, e.g., BOX Rule Section 18 "The Price Improvement Period" and ISE Rule 723 "Price Improvement Mechanism for Crossing Transactions" (both of which providing a mechanism for options members that want to internalize customer orders the ability to do so on the exchanges subject to a requirement that such orders first be exposed to all other options members through a brief price improvement auction).

Commission (the "Commission").<sup>4</sup> The text of the proposed rule change is available at the NYSE Amex, at the Commission's Public Reference Room, and on NYSE Amex's Web site at <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, NYSE Amex 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 SRO 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change, to delete Rule 346—NYSE Amex Equities (Limitations—Employment and Association with Members and Member Organizations) and adopt new Rule 3270—NYSE Amex Equities (Outside Business Activities of Registered Persons), is to correspond with rule changes filed by FINRA and approved by the Commission.

#### Background

On July 30, 2007, FINRA's predecessors, the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc. ("NYSE"), consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the "Act"), the New York Stock Exchange LLC ("NYSE"), NYSE and FINRA entered into an agreement (the "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 SRO became a party to the Agreement effective December 15, 2008.<sup>5</sup>

<sup>4</sup> See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (approval order).

<sup>5</sup> See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054) (order approving the incorporation of certain NYSE

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>6</sup>

#### Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA adopted NASD Rule 3030 (Outside Business Activities of an Associated Person), which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investments, unless he has provided prompt written notice to his member firm, as consolidated FINRA Rule 3270 requires, subject to certain modifications. FINRA also deleted Incorporated NYSE Rule 346 as it is substantially similar to consolidated FINRA Rule 3270.<sup>7</sup>

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the SRO correspondingly proposes to delete Rule 346—NYSE Amex Equities and replace it with proposed Rule 3270—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.<sup>8</sup> As proposed, Rule 3270—NYSE Amex Equities adopts the same language as FINRA Rule 3270, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes.

#### 2. Statutory Basis

The SRO believes that the proposed rule changes are consistent with the provisions of Section 6(b) of the Act,<sup>9</sup> in general, and further the objectives of

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

<sup>6</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 ("Dual 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>7</sup> See fn. 4.

<sup>8</sup> The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-2011-12.

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

Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that they are 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 SRO believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the SRO has proposed 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 NYSE Amex Equities Rules.

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

The SRO 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, as amended.

### 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 by the SRO with respect to the proposed rule change.

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

The SRO has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The SRO has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The SRO believes that this filing is non-controversial because it raises no novel issues and is consistent with the FINRA rule filing previously approved by the Commission on which it is based.<sup>15</sup> In particular, the purpose of the proposed rule changes is to conform the NYSE Amex Equities Rules to FINRA's adoption of consolidated FINRA Rule 3270 in furtherance of the consolidation of the member firm regulation functions of NYSE and FINRA. Except as specifically noted, and subject to such technical changes as are necessary to apply the Rule to the SRO, NYSE Amex proposes to adopt the rule changes in the form that they were approved by the Commission for FINRA. Accordingly, the SRO believes that these rule changes are eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.<sup>16</sup> The SRO requested an accelerated operative date for the proposed rule changes in order to avoid regulatory gaps between the FINRA and NYSE Amex Equity Rules and to further ensure that, as applicable, the NYSE Amex Equity Rules maintain their status as Common Rules under the Agreement.<sup>17</sup> The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay for this reason, and hereby grants such a waiver.<sup>18</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. 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-2011-17 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-2011-17. 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 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE'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-2011-17 and should be submitted on or before April 22, 2011.

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

Cathy H. Ahn,  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64131; File No. SR-NYSE-2011-12]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 346 and Adopting New Rule 3270 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

March 28, 2011.

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 March 14, 2011, New York Stock Exchange LLC ("NYSE" or the "SRO") 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 substantially prepared by the SRO. 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 SRO proposes to delete NYSE Rule 346 and adopt new Rule 3270 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Securities and Exchange Commission (the "Commission").<sup>4</sup> The text of the proposed rule change is available at the NYSE, at the Commission's Public Reference Room, and on NYSE's Web site at <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 NYSE included statements concerning the purpose of, and basis for, the

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> See fn. 4.

<sup>16</sup> See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 (July 11, 2008) (concerning 17 CFR 200 and 241).

<sup>17</sup> As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein. See fn. 5.

<sup>18</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<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. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (approval order).