

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59726; File No. SR-FINRA-2009-025)

April 8, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Incorporated NYSE Rules 2, 2A and 325 to Conform to Amendments made by NYSE

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 April 7, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend Incorporated NYSE Rules 2 (“Member,” “Membership,” “Member Firm,” etc.), 2A (Jurisdiction) and 325 (Capital Requirements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Member Organizations)⁴ to conform to rule changes by the New York Stock Exchange, LLC (“NYSE”) to its versions of Rules 2, 2A and 325.⁵

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

⁴ 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 FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁵ See File No. SR-NYSE-2008-46; File No. SR-NYSE-2008-127.

FINRA is proposing changes to Incorporated NYSE Rules 2,⁶ 2A⁷ and 325⁸ to conform these rules to amendments made by NYSE which established a new market model (“New Model”).⁹ As described by the NYSE in its filing,¹⁰ the New Model: (i) provides market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) creates a Designated Market Maker (“DMM”), and phases out the NYSE specialist; and (iii) enhances the speed of execution through technological enhancements and reduces message traffic between Exchange systems and its DMMs.

The NYSE believes that its New Model requires a new type of market maker¹¹ with the ability to contribute liquidity in a security by trading competitively for its dealer account. The NYSE proposed to phase out the existing specialist system and to replace specialists with Designated Market Makers who will be employees of Designated MarketMaker Units (“DMM Units”). According to the NYSE, although the specialist system has served a central role in equities trading at the NYSE for well over a century, specialist trading is, by nature, well-suited to manual trading, and less suitable for

⁶ Incorporated NYSE Rule 2 defines terms including “member,” “member organization,” and “approved person.”

⁷ Incorporated NYSE Rule 2A sets forth the jurisdiction of the Exchange.

⁸ Incorporated NYSE Rule 325 sets forth capital requirements for member organizations.

⁹ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (Order Approving File No. SR-NYSE-2008-46); Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (Order Approving File No. SR-NYSE-127). [sic]

¹⁰ See File No. SR-NYSE-2008-46.

¹¹ The term “market maker” shall have the same meaning as that term in Section (3)(a)(38) of the Act.

electronic trading. The NYSE recognizes that the scheme of rules and obligations governing specialists can unduly hamstring them in an electronic market and prevent them from easily fulfilling their appointed role. To address this new reality, DMM Units will be given tools and opportunities that are not available to specialists, but that are more commensurate with trading in electronic markets.

Under the NYSE filings, definitions of “Designated Market Maker” and “DMM Unit” were added to NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.) and a reference to specialist was changed to DMM under NYSE Rule 325 (Capital Requirements Member Organizations) to conform these rules to the operation of the New Model.¹²

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 2, 2A and 325 to ensure consistency with NYSE’s versions of Rules 2, 2A and 325.¹³

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules

¹² See supra note 5.

¹³ Pursuant to Rule 17d-2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement (“Agreement”) to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all those rules (“Common Rules”) for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

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 is necessary and appropriate to conform these rules to the operation of NYSE's New Model and to maintain consistency with the NYSE's amendments to its Rules 2, 2A and 325.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Such waiver would permit FINRA to implement these changes without delay, thereby allowing FINRA's Incorporated NYSE Rules to maintain their status as Common Rules under the Agreement upon filing of the proposed rule change with the Commission. 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 waiver.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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:

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only 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).

- 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-2009-025 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-2009-025. 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 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 FINRA. 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-FINRA-2009-025 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).