

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to incorporate certain rules of New York Stock Exchange LLC (“NYSE”) relating to the regulation of member firm conduct (the “Incorporated NYSE Rules”). As further discussed herein, the Incorporated NYSE Rules will apply solely to members of the Financial Industry Regulatory Authority, Inc. (“FINRA”)² that also are members of NYSE (“Dual Members”) on or after the date of closing of the Transaction.

A list of the Incorporated NYSE Rules, as of the effective date of this proposed rule change, is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD (“NASD Board”) at its meeting on November 21, 2006, which authorized the filing of the rule change with the SEC. No other action by NASD is necessary for the filing of the proposed rule change.

The effective date of the proposed rule change will be the closing of the

¹ 15 U.S.C. 78s(b)(1).

² As of the date of closing of the Transaction (as defined in the proposed rule change), NASD will change its corporate name to FINRA.

Transaction. The proposed rule change will not become effective if the Transaction does not close.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

Currently, both NASD and NYSE Regulation, Inc. (“NYSE Regulation”) oversee the activities of U.S.-based broker-dealers doing business with the public, approximately 170 of which are regulated by both organizations. The result is a duplicative, sometimes conflicting system that makes inefficient use of resources and, as such, can be detrimental to the ultimate goal of investor protection.

NASD has long supported the adoption of a hybrid model of self-regulation, with one self-regulatory organization having responsibility for all member firm regulation.³ At the same time, the SEC, Congress, securities firms and independent observers have long encouraged greater efficiencies, clarity and cost savings in the regulation of the U.S. financial markets.

With these goals in mind, on November 28, 2006, NASD and the NYSE Group, Inc. (“NYSE Group”) announced a plan to consolidate their member regulation operations into a combined organization (the “Transaction”) that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct

³ See NASD comment letter dated March 15, 2005 in response to the SEC’s Concept Release Concerning Self-Regulation, Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (File No. S7-40-04).

business with the public.⁴ This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

Incorporation of NYSE Conduct Rules – General

FINRA will work expeditiously to consolidate the rules that apply to its member firms, reducing to one the two sets of rules currently applicable to Dual Members. During an interim period, however, until the adoption of a consolidated rulebook, NASD is proposing to incorporate into FINRA's rulebook the Incorporated NYSE Rules enumerated in Exhibit 5 of the proposed rule change.⁵ The Incorporated NYSE Rules will apply solely to Dual Members until such time as FINRA adopts, subject to SEC

⁴ See SR-NASD-2007-023, which proposes to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007).

⁵ The text of the Incorporated NYSE Rules set forth in Exhibit 5, as of the effective date of the proposed rule change, will be available on the FINRA Web site. To the extent the Commission has approved an amendment to an Incorporated NYSE Rule prior to the closing of the Transaction that has not yet become effective, NASD is proposing to incorporate any such amendment into FINRA's rulebook (with such amendment becoming effective upon its scheduled effective date). In the event the NYSE were to amend the Incorporated NYSE Rules following the closing of the Transaction, NASD is not proposing to incorporate any such future amendments into FINRA's rulebook, absent a separate rule filing by FINRA to adopt conforming changes.

approval, consolidated rules applicable to all of its members.⁶

As further detailed in Exhibit 5, the proposed rule change would incorporate those NYSE rules pertaining to the regulation of member firm conduct.⁷ In applying the Incorporated NYSE Rules to Dual Members, FINRA also would incorporate the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

Importantly, under the proposed rule change, there would be no new rule requirements placed on member firms as a result of the Transaction. Until the adoption of a consolidated rulebook by FINRA, those members that are NASD-only members as of the date of the closing would continue to comply with NASD (and not NYSE) rules; those members that were Dual Members as of the date of closing would continue to be subject to NASD and NYSE rules; and Dual Members that were not also members of NASD as of the date of closing (“NYSE-only members”) would continue to comply with NYSE (and not NASD) rules, provided that any such NYSE-only member does not engage in any activities that would have required it to be an NASD member in which

⁶ The Incorporated NYSE Rules set forth in Exhibit 5 would continue to apply to the same categories of persons to which they currently apply. In other words, in addition to applying to Dual Members, the Incorporated NYSE Rules would apply to persons affiliated with those firms to the same extent and in the same manner that they currently apply.

⁷ To the extent an Incorporated NYSE Rule includes a reference to NYSE or the Exchange, such terms will be construed to mean FINRA, unless the context otherwise requires.

case the NYSE-only member would be subject to both NYSE and NASD rules.⁸ In short, the proposed rule change is designed to ensure that all firms, whether Dual Members or members of only NYSE or NASD, will have the same set of regulatory obligations immediately following the closing of the Transaction that those firms had prior to the closing of the Transaction.

Because NYSE Group would maintain the functions it currently carries out with respect to market operations, including market surveillance functions, the proposed rule change would not incorporate NYSE rules in such areas as market regulation, including those rules addressing NYSE's Order Tracking System ("OTS"), and listing standards. The proposed rule change also would not incorporate NYSE's proxy rules. Further, the proposed rule change would not incorporate NYSE arbitration rules, as FINRA would operate its arbitration and mediation forums pursuant to the NASD Code of Arbitration Procedure.⁹

Disciplinary Matters

The proposed rule change would not incorporate the NYSE Disciplinary Rules;

⁸ NASD anticipates NYSE's filing a proposed rule change to require its members to be members of FINRA, and expects to file a separate rule change to establish a waive-in application process for the NYSE-only members. These NYSE-only members will be subject to FINRA's By-Laws and Schedules to the By-Laws, including Schedule A (Assessments and Fees), as well as the NASD Rule 8000 Series (Investigations and Sanctions) and Rule 9000 Series (Code of Procedure).

⁹ NYSE recently filed a proposed rule change to provide guidance regarding new and pending arbitration claims in light of the consolidation of NYSE Regulation's arbitration department with that of NASD Dispute Resolution, Inc. See Securities Exchange Act Release No. 56015 (July 5, 2007), 72 FR 37811 (July 11, 2007) (Notice of Filing of Proposed Rule Change and Amendment No. 1) (SR-NYSE-2007-48).

rather, FINRA would conduct its disciplinary proceedings in accordance with the NASD Code of Procedure. With respect to any disciplinary investigations pending at NYSE Regulation as of the date of closing of the Transaction that pertain to the Incorporated NYSE Rules, the applicable rules and forum will depend on whether NYSE Regulation has filed a Charge Memorandum or Stipulation of Facts and Consent to Penalty (“Stipulation and Consent”) as of the date of closing. In the event NYSE Regulation has filed a Charge Memorandum or Stipulation and Consent as of the date of closing, the matter (including any later appeals) will be adjudicated in accordance with the NYSE Disciplinary Rules and before the NYSE Hearing Board. Similarly, to the extent an NYSE Hearing Board decision remains subject to appeal as of the date of closing, any such appeal would be addressed pursuant to the NYSE Disciplinary Rules.

In contrast, if as of the date of closing, NYSE Regulation has not filed a Charge Memorandum or Stipulation and Consent in an investigation relating to the Incorporated NYSE Rules, the matter (including any later appeals) will be adjudicated by FINRA, pursuant to the FINRA (NASD) Code of Procedure, which includes the Acceptance, Waiver and Consent (AWC) process pursuant to the FINRA Code of Procedure.¹⁰

¹⁰ Under the proposed rule change, FINRA would incorporate NYSE Rule 477 (Retention of Jurisdiction-Failure to Cooperate) with respect to matters relating to potential violations of the Incorporated NYSE Rules. NYSE Rule 477 governs, among other things, NYSE’s retention of jurisdiction over certain persons for purposes of initiating disciplinary actions. The rule generally provides that NYSE shall retain jurisdiction over such persons if, prior to termination, or within one year following receipt by NYSE of written notice of the termination, of a person’s status as a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization, NYSE serves written notice on such person that it is making inquiry into matters occurring prior to the termination of such person’s status.

Regarding summary proceedings currently adjudicated pursuant to NYSE Rule 475, the applicable rule and forum will depend on whether NYSE Regulation has notified the person or entity in writing of the summary action before the closing date. If the notification in writing has occurred before the closing date, then the matter will be adjudicated pursuant to NYSE Disciplinary Rules. If no such notification has occurred, the matter will be addressed by FINRA, pursuant to FINRA rules.

Finally, with regard to fines imposed pursuant to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) (or summary fines), if a summary fine notice is issued before the date of closing, the matter will be handled pursuant to NYSE rules. With respect to matters arising after the date of closing, NASD expects to file a separate rule change to modify its Minor Rule Violation Plan (“MRVP”) to include the Incorporated NYSE Rules that, as of the date of such filing, are enumerated in NYSE’s MRVP. Thus, after the date of closing, assuming SEC approval of the proposed rule changes, FINRA will be authorized to impose fines under NASD’s MRVP for minor violations by Dual Members of the NYSE rules enumerated in NASD’s MRVP.

Non-Exclusive Common Rules

As further detailed in the Agreement between NASD, NYSE, and NYSE Regulation pursuant to SEC Rule 17d-2 under the Act (the “Rule 17d-2 Agreement”), certain of the Incorporated NYSE Rules have been designated “Non-Exclusive Common Rules” for which both FINRA and NYSE will bear responsibility when performing their respective regulatory responsibilities. The potential violation of a Non-Exclusive Common Rule as it pertains to matters other than member firm regulation as set forth in

the Rule 17d-2 Agreement would continue to be adjudicated by NYSE Regulation, in accordance with NYSE Disciplinary Rules. In addition to the Non-Exclusive Common Rules, over which NYSE Regulation and FINRA will have non-exclusive responsibility, NYSE Regulation will retain full authority to investigate and prosecute any violations of the NYSE rules that are not Incorporated NYSE Rules.

As noted in Item 2 above, the effective date of the proposed rule change will be the closing of the Transaction. The proposed rule change will not become effective if the Transaction does not close.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹¹ including Section 15A(b)(2) of the Act,¹² in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder and FINRA rules. NASD further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that FINRA rules 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. As a result of the proposed rule change, firms that currently are regulated by both NASD and NYSE Regulation will

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(b)(2).

¹³ 15 U.S.C. 78o-3(b)(6).

continue to comply with the same set of rules applicable to their operations, with minimal disruption to the businesses. FINRA will work expeditiously to consolidate the rules applicable to such members, so that they are required to comply with only one set of rules.

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

NASD 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.¹⁴

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁵

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act¹⁶ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The sole purpose of this rule change is to delineate those rules to be incorporated by FINRA, to apply solely to Dual Members until such

¹⁴ 15 U.S.C. 78a.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 15 U.S.C. 78s(b)(2).

time as FINRA adopts, subject to SEC approval, consolidated rules applicable to all of its members. The proposed rule change does not propose any substantive amendments to such rules.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

NASD is proposing to incorporate the NYSE Rules enumerated in Exhibit 5 of the proposed rule change.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. List of NYSE Rules to be incorporated by FINRA.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-054)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct

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 , the 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, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD is proposing to incorporate certain rules of New York Stock Exchange LLC (“NYSE”) relating to the regulation of member firm conduct (the “Incorporated NYSE Rules”). As further discussed herein, the Incorporated NYSE Rules will apply solely to members of the Financial Industry Regulatory Authority, Inc. (“FINRA”)³ that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As of the date of closing of the Transaction (as defined in the proposed rule change), NASD will change its corporate name to FINRA.

also are members of NYSE (“Dual Members”) on or after the date of closing of the Transaction.

A list of the Incorporated NYSE Rules, as of the effective date of this proposed rule change, is attached as Exhibit 5.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Background

Currently, both NASD and NYSE Regulation, Inc. (“NYSE Regulation”) oversee the activities of U.S.-based broker-dealers doing business with the public, approximately 170 of which are regulated by both organizations. The result is a duplicative, sometimes conflicting system that makes inefficient use of resources and, as such, can be detrimental to the ultimate goal of investor protection.

NASD has long supported the adoption of a hybrid model of self-regulation, with one self-regulatory organization having responsibility for all member firm regulation.⁴

⁴ See NASD comment letter dated March 15, 2005 in response to the SEC’s Concept Release Concerning Self-Regulation, Securities Exchange Act Release

At the same time, the SEC, Congress, securities firms and independent observers have long encouraged greater efficiencies, clarity and cost savings in the regulation of the U.S. financial markets.

With these goals in mind, on November 28, 2006, NASD and the NYSE Group, Inc. (“NYSE Group”) announced a plan to consolidate their member regulation operations into a combined organization (the “Transaction”) that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public.⁵ This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

Incorporation of NYSE Conduct Rules – General

FINRA will work expeditiously to consolidate the rules that apply to its member firms, reducing to one the two sets of rules currently applicable to Dual Members. During an interim period, however, until the adoption of a consolidated rulebook, NASD is proposing to incorporate into FINRA’s rulebook the Incorporated NYSE Rules

No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (File No. S7-40-04).

⁵ See SR-NASD-2007-023, which proposes to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007).

enumerated in Exhibit 5 of the proposed rule change.⁶ The Incorporated NYSE Rules will apply solely to Dual Members until such time as FINRA adopts, subject to SEC approval, consolidated rules applicable to all of its members.⁷

As further detailed in Exhibit 5, the proposed rule change would incorporate those NYSE rules pertaining to the regulation of member firm conduct.⁸ In applying the Incorporated NYSE Rules to Dual Members, FINRA also would incorporate the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

Importantly, under the proposed rule change, there would be no new rule requirements placed on member firms as a result of the Transaction. Until the adoption of a consolidated rulebook by FINRA, those members that are NASD-only members as of the date of the closing would continue to comply with NASD (and not NYSE) rules;

⁶ The text of the Incorporated NYSE Rules set forth in Exhibit 5, as of the effective date of the proposed rule change, will be available on the FINRA Web site. To the extent the Commission has approved an amendment to an Incorporated NYSE Rule prior to the closing of the Transaction that has not yet become effective, NASD is proposing to incorporate any such amendment into FINRA's rulebook (with such amendment becoming effective upon its scheduled effective date). In the event the NYSE were to amend the Incorporated NYSE Rules following the closing of the Transaction, NASD is not proposing to incorporate any such future amendments into FINRA's rulebook, absent a separate rule filing by FINRA to adopt conforming changes.

⁷ The Incorporated NYSE Rules set forth in Exhibit 5 would continue to apply to the same categories of persons to which they currently apply. In other words, in addition to applying to Dual Members, the Incorporated NYSE Rules would apply to persons affiliated with those firms to the same extent and in the same manner that they currently apply.

⁸ To the extent an Incorporated NYSE Rule includes a reference to NYSE or the Exchange, such terms will be construed to mean FINRA, unless the context otherwise requires.

those members that were Dual Members as of the date of closing would continue to be subject to NASD and NYSE rules; and Dual Members that were not also members of NASD as of the date of closing (“NYSE-only members”) would continue to comply with NYSE (and not NASD) rules, provided that any such NYSE-only member does not engage in any activities that would have required it to be an NASD member in which case the NYSE-only member would be subject to both NYSE and NASD rules.⁹ In short, the proposed rule change is designed to ensure that all firms, whether Dual Members or members of only NYSE or NASD, will have the same set of regulatory obligations immediately following the closing of the Transaction that those firms had prior to the closing of the Transaction.

Because NYSE Group would maintain the functions it currently carries out with respect to market operations, including market surveillance functions, the proposed rule change would not incorporate NYSE rules in such areas as market regulation, including those rules addressing NYSE’s Order Tracking System (“OTS”), and listing standards. The proposed rule change also would not incorporate NYSE’s proxy rules. Further, the proposed rule change would not incorporate NYSE arbitration rules, as FINRA would operate its arbitration and mediation forums pursuant to the NASD Code of Arbitration Procedure.¹⁰

⁹ NASD anticipates NYSE’s filing a proposed rule change to require its members to be members of FINRA, and expects to file a separate rule change to establish a waive-in application process for the NYSE-only members. These NYSE-only members will be subject to FINRA’s By-Laws and Schedules to the By-Laws, including Schedule A (Assessments and Fees), as well as the NASD Rule 8000 Series (Investigations and Sanctions) and Rule 9000 Series (Code of Procedure).

¹⁰ NYSE recently filed a proposed rule change to provide guidance regarding new

Disciplinary Matters

The proposed rule change would not incorporate the NYSE Disciplinary Rules; rather, FINRA would conduct its disciplinary proceedings in accordance with the NASD Code of Procedure. With respect to any disciplinary investigations pending at NYSE Regulation as of the date of closing of the Transaction that pertain to the Incorporated NYSE Rules, the applicable rules and forum will depend on whether NYSE Regulation has filed a Charge Memorandum or Stipulation of Facts and Consent to Penalty (“Stipulation and Consent”) as of the date of closing. In the event NYSE Regulation has filed a Charge Memorandum or Stipulation and Consent as of the date of closing, the matter (including any later appeals) will be adjudicated in accordance with the NYSE Disciplinary Rules and before the NYSE Hearing Board. Similarly, to the extent an NYSE Hearing Board decision remains subject to appeal as of the date of closing, any such appeal would be addressed pursuant to the NYSE Disciplinary Rules.

In contrast, if as of the date of closing, NYSE Regulation has not filed a Charge Memorandum or Stipulation and Consent in an investigation relating to the Incorporated NYSE Rules, the matter (including any later appeals) will be adjudicated by FINRA, pursuant to the FINRA (NASD) Code of Procedure, which includes the Acceptance, Waiver and Consent (AWC) process pursuant to the FINRA Code of Procedure.¹¹

and pending arbitration claims in light of the consolidation of NYSE Regulation’s arbitration department with that of NASD Dispute Resolution, Inc. See Securities Exchange Act Release No. 56015 (July 5, 2007), 72 FR 37811 (July 11, 2007) (Notice of Filing of Proposed Rule Change and Amendment No. 1) (SR-NYSE-2007-48).

¹¹ Under the proposed rule change, FINRA would incorporate NYSE Rule 477 (Retention of Jurisdiction-Failure to Cooperate) with respect to matters relating to

Regarding summary proceedings currently adjudicated pursuant to NYSE Rule 475, the applicable rule and forum will depend on whether NYSE Regulation has notified the person or entity in writing of the summary action before the closing date. If the notification in writing has occurred before the closing date, then the matter will be adjudicated pursuant to NYSE Disciplinary Rules. If no such notification has occurred, the matter will be addressed by FINRA, pursuant to FINRA rules.

Finally, with regard to fines imposed pursuant to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) (or summary fines), if a summary fine notice is issued before the date of closing, the matter will be handled pursuant to NYSE rules. With respect to matters arising after the date of closing, NASD expects to file a separate rule change to modify its Minor Rule Violation Plan (“MRVP”) to include the Incorporated NYSE Rules that, as of the date of such filing, are enumerated in NYSE’s MRVP. Thus, after the date of closing, assuming SEC approval of the proposed rule changes, FINRA will be authorized to impose fines under NASD’s MRVP for minor violations by Dual Members of the NYSE rules enumerated in NASD’s MRVP.

Non-Exclusive Common Rules

As further detailed in the Agreement between NASD, NYSE, and NYSE

potential violations of the Incorporated NYSE Rules. NYSE Rule 477 governs, among other things, NYSE’s retention of jurisdiction over certain persons for purposes of initiating disciplinary actions. The rule generally provides that NYSE shall retain jurisdiction over such persons if, prior to termination, or within one year following receipt by NYSE of written notice of the termination, of a person’s status as a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization, NYSE serves written notice on such person that it is making inquiry into matters occurring prior to the termination of such person’s status.

Regulation pursuant to SEC Rule 17d-2 under the Act (the “Rule 17d-2 Agreement”), certain of the Incorporated NYSE Rules have been designated “Non-Exclusive Common Rules” for which both FINRA and NYSE will bear responsibility when performing their respective regulatory responsibilities. The potential violation of a Non-Exclusive Common Rule as it pertains to matters other than member firm regulation as set forth in the Rule 17d-2 Agreement would continue to be adjudicated by NYSE Regulation, in accordance with NYSE Disciplinary Rules. In addition to the Non-Exclusive Common Rules, over which NYSE Regulation and FINRA will have non-exclusive responsibility, NYSE Regulation will retain full authority to investigate and prosecute any violations of the NYSE rules that are not Incorporated NYSE Rules.

The effective date of the proposed rule change will be the closing of the Transaction. The proposed rule change will not become effective if the Transaction does not close.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² including Section 15A(b)(2) of the Act,¹³ in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder and FINRA rules. NASD further believes that the

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(2).

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 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. As a result of the proposed rule change, firms that currently are regulated by both NASD and NYSE Regulation will continue to comply with the same set of rules applicable to their operations, with minimal disruption to the businesses. FINRA will work expeditiously to consolidate the rules applicable to such members, so that they are required to comply with only one set of rules.

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

NASD 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.¹⁵

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

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁶ for approving the proposed rule change prior to the 30th day after

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78a.

¹⁶ 15 U.S.C. 78s(b)(2).

publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the sole purpose of this rule change is to delineate those rules to be incorporated by FINRA, to apply solely to Dual Members until such time as FINRA adopts, subject to SEC approval, consolidated rules applicable to all of its members. The proposed rule change does not propose any substantive amendments to such rules.

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-NASD-2007-054 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-054. 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. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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-NASD-2007-054 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated

authority.¹⁷

Nancy M. Morris

Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5**Incorporated NYSE Rules**

FINRA is incorporating into its rulebook the rules of New York Stock Exchange LLC (“NYSE”) listed below (the “Incorporated NYSE Rules”). The Incorporated NYSE Rules will apply solely to those members of FINRA that are also members of NYSE on or after [insert date of closing of the consolidation of the member regulatory functions of NASD and NYSE Regulation] (“Dual Members”), until such time as FINRA adopts a consolidated rulebook applicable to all of its members. The Incorporated NYSE Rules will apply to the same categories of persons to which they apply as of [insert date of closing of the transaction consolidating the member regulatory functions of NASD and NYSE Regulation]. In applying the Incorporated NYSE Rules to Dual Members, FINRA also is incorporating the related interpretive positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

Rule 1	“The Exchange”
Rule 2	“Member,” “Membership,” “Member Firm,” etc.
Rule 2A	“Jurisdiction”
Rule 2B	No Affiliation between Exchange and any Member Organization
Rule 3	“Security”
Rule 4	“Stock”
Rule 5	“Bond”
Rule 6	“Floor”
Rule 8	“Delivery”
Rule 9	“Branch Office Manager”
Rule 10	“Registered Representative”
Rule 11	Effect of Definitions
Rule 12	“Business Day”
Rule 134	Differences and Omissions – Cleared Transactions
Rule 176	Delivery Time
Rule 177	Delivery Time – “Cash” Contracts
Rule 180	Failure to Deliver
Rule 282	Buy-in Procedures
Rule 283	Members Closing Contracts – Procedure
Rule 285	Notice of Intention to Successive Parties
Rule 286	Closing Portion of Contract

- Rule 287 Liability of Succeeding Parties
- Rule 288 Notice of Closing to Successive Parties
- Rule 289 Must Receive Delivery
- Rule 290 Defaulting Party May Deliver After “Buy-In” Notice
- Rule 291 Failure to Fulfill Closing Contract
- Rule 292 Restrictions on Members’ Participation in Transaction to Close Defaulted Contracts
- Rule 293 Closing Contracts in Suspended Securities
- Rule 294 Default in Loan of Money
- Rule 296 Liquidation of Securities Loans and Borrowings
- Rule 311 Formation and Approval of Member Organizations
- Rule 312 Changes Within Member Organizations
- Rule 313 Submission of Partnership Articles – Submission of Corporate Documents
- Rule 319 Fidelity Bonds
- Rule 321 Formation or Acquisition of Subsidiaries
- Rule 322 Guarantees by, or Flow Through Benefits for Members or Member Organizations
- Rule 325 Capital Requirements Members Organizations
- Rule 326(a) Growth Capital Requirement
- Rule 326(b) Business Reduction Capital Requirement
- Rule 326(c) Unsecured Loans and Advances
- Rule 326(d) Reduction of Elimination of Loans and Advances
- Rule 328 Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements
- Rule 342 Offices-Approval, Supervision and Control
- Rule 343 Offices-Sole Tenancy, Hours, Display of Membership Certificates
- Rule 344 Research Analysts and Supervisory Analysts
- Rule 345 Employees-Registration, Approval, Records
- Rule 345A Continuing Education for Registered Persons
- Rule 346 Limitations - Employment and Association with Members and Member Organizations
- Rule 350 Compensation or Gratuities to Employees of Others
- Rule 351 Reporting Requirements
- Rule 352 Guarantees, Sharing in Accounts, and Loan Arrangements

Rule 353	Rebates and Compensation
Rule 354	Reports to Control Persons
Rule 375	Missing the Market
Rule 382	Carrying Agreements
Rule 387	COD Orders
Rule 392	Notification Requirements for Offerings of Listed Securities
Rule 401	Business Conduct
Rule 401A	Customer Complaints
Rule 402	Customer Protection-Reserves and Custody of Securities
Rule 404	Individual Members Not To Carry Accounts
Rule 405	Diligence as to Accounts
Rule 405A	Non-Managed Fee-Based Account Programs – Disclosure and Monitoring
Rule 406	Designation Of Accounts
Rule 407	Transactions-Employees of Members, Member Organizations and the Exchange
Rule 407A	Disclosure of All Member Accounts
Rule 408	Discretionary Power in Customers' Accounts
Rule 409	Statements of Accounts to Customers
Rule 409A	SIPC Disclosures
Rule 410	Records of Orders
Rule 411	Erroneous Reports
Rule 412	Customer Account Transfer Contracts
Rule 413	Uniform Forms
Rule 414	Index and Currency Warrants
Rule 416	Questionnaires and Reports
Rule 416A	Member and Member Organization Profile Information Updates and Quarterly Certifications Via The Electronic Filing Platform
Rule 418	Audit
Rule 420	Reports of Borrowings and Subordinate Loans For Capital Purposes
Rule 421	Periodic Reports
Rule 424	Reports of Options
Rule 430	Partial Delivery of Securities to Customers on C.O.D. Purchases
Rule 431	Margin Requirements
Rule 432	Daily Record of Required Margin

Rule 434	Required Submission of Requests for Extensions of Time for Customers
Rule 435	Miscellaneous Prohibitions (Excessive Trading by Members)
Rule 436	Interest on Credit Balances
Rule 440	Books and Records
Rule 440A	Telephone Solicitation
Rule 440F	Public Short Sale Transactions Effected on the Exchange
Rule 440G	Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations
Rule 440I	Records of Compensation Arrangements – Floor Brokerage
Rule 445	Anti-Money Laundering Compliance Program
Rule 446	Business Continuity and Contingency Plans
Rule 472	Communications with the Public
Rule 477	Retention of Jurisdiction—Failure to Cooperate
Rule 700	Applicability, Definitions and References
Rule 704	Position Limits
Rule 705	Exercise Limits
Rule 707	Liquidation of Positions
Rule 709	Other Restrictions on Exchange Option Transactions and Exercises
Rule 720	Registration of Options Principals
Rule 721	Opening of Accounts
Rule 722	Supervision of Accounts
Rule 723	Suitability
Rule 724	Discretionary Accounts
Rule 725	Confirmations
Rule 726	Delivery of Options Disclosure Document and Prospectus
Rule 727	Transactions with Issuers
Rule 728	Registered Stock
Rule 730	Statement of Accounts
Rule 732	Customer Complaints
Rule 780	Exercise of Option Contracts
Rule 781	Allocation of Exercise Assignment Notices
Rule 791	Communications to Customers