

notification in the event of “material non-compliance” as provided by the current rule.

*Section 303A.14—Web site requirement:*

Listed companies have expressed confusion regarding the placement within Section 303A of the requirement contained in Section 303A.14 that each listed company must maintain a publicly accessible Web site. As a result, the Exchange proposes to redesignate Section 303A.14 as Section 307.00 and to clarify in the commentary that this requirement applies to companies subject to Web site posting requirements under any applicable provision of the Listed Company Manual, rather than just Section 303A. Section 307 will specify that companies’ Web sites must be accessible from the United States, must clearly indicate in the English language the location of the documents on the Web site that are required to be posted and such documents must be printable in the English language.

*Section 307.00:*

Section 307.00 of the Listed Company Manual sets out guidance regarding related party transactions. As this guidance is duplicative of Section 314 (“Related Party Transactions”) and is therefore redundant, the Exchange proposes to eliminate Section 307.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that 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, in general, to protect investors and the public interest. The Exchange believes the proposed amendments are consistent with the protection of investors and the public interest, as they simply apply existing principles of Section 303A to situations not currently covered by the rules, clarify existing interpretations of Exchange rules and harmonize Exchange disclosure requirements with those of the Commission and, therefore, do not substantively lessen the Exchange’s regulatory requirements for listed companies.

*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**

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 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 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2009–89 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–NYSE–2009–89. 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 Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. 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 [www.nyse.com](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–NYSE–2009–89 and should be submitted on or before October 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–60648; File No. SR–FINRA–2009–048]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5230 (Payments Involving Publications That Influence the Market Price of a Security) in the Consolidated FINRA Rulebook**

September 10, 2009.

On July 21, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend the By-Laws of FINRA Regulation, Inc. (“FINRA Regulation”) to adopt NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 in the consolidated FINRA rulebook, with several changes to clarify

<sup>9</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the scope of the rule. The proposed rule change was published for comment in the **Federal Register** on August 7, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> 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. The Commission believes that the proposed rule change should continue to protect investors and promote the maintenance of fair, orderly and efficient markets by modernizing and clarifying the regulations that apply when payments are made in connection with the publication or circulation of media that could have an effect on the market price of any security. The Commission notes that the types of media that could have an effect on the market price of a security have changed since NASD Rule 3330 was last amended. Therefore, the updating of the list of media in proposed FINRA Rule 5230 will modernize the regulation.

The Commission also notes that payments for the publication of information relating to securities are permitted in certain circumstances under Section 17(b) of the Securities Act and under NASD Rule 2711(h)(13). Therefore, the Commission believes that the amendment to the rule will clarify that proposed FINRA Rule 5230 is consistent with these and other regulations where such payments are explicitly permitted.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-FINRA-2009-048) be, and it hereby is, approved.

<sup>3</sup> See Securities Exchange Act Release No. 60422 (August 3, 2009), 74 FR 39725.

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> 15 U.S.C. 78s(b)(2)

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60647; File No. SR-NYSEAmex-2009-60]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements

September 10, 2009.

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 September 4, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the "Corporation"),<sup>4</sup> to amend its bylaws and Director Independence Policy to require that at least three-fourths of the members of its Board of Directors shall satisfy the independence requirements for directors of the Corporation. Currently the bylaws and Director Independence Policy require that all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements.<sup>5</sup>

<sup>1</sup> 17 CFR 200.30-3(a)(12)

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

<sup>5</sup> NYSE Amex, a Delaware limited liability company, is an indirect wholly owned subsidiary of NYSE Euronext.

<sup>6</sup> See Section 3.4 of the "Amended and Restated Bylaws of NYSE Euronext." The provisions of any other internal policy documents of the Corporation containing substantially equivalent language will be

The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC ("NYSE") that was recently approved by the Commission.<sup>6</sup> The text of the proposed rule change is attached hereto as Exhibit 5,<sup>7</sup> and is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, and at the Public Reference Room of the Commission.

#### 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, the Bylaws of the Corporation, which is the ultimate parent company of the Exchange, require that "all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time." Similarly, the Director Independence Policy of the Corporation states that "[e]ach Director (other than the Chief Executive Officer and the Deputy Chief Executive Officer), including the Chairman of the Board and the Deputy Chairman of the Board if not also the Chief Executive Officer or the Deputy Chief Executive Officer, shall be independent within the meaning of this Policy." The Corporation desires to amend both documents to strike a more appropriate balance between the independence requirements and other qualifications of its directors. Specifically, the Corporation proposes to revise the independence standard in the Bylaws to

modified to conform with the proposed Bylaw and Director Independence Policy changes.

<sup>6</sup> Securities Exchange Act Release No. 60542 (August 19, 2009), 74 FR 43193 (August 26, 2009) (SR-NYSE-2009-60).

<sup>7</sup> The Commission notes that Exhibit 5 is attached to the rule filing with the Commission, but not to this release.