

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 007

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
Pilot ☐			Rule		
Extension of Time Period for Commission Action ☐			☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		
Date Expires 					

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend Incorporated NYSE Rules 12 and 282, and delete Incorporated NYSE Rule 177 to conform with amendments by the NYSE to its versions of Rules 12, 177 and 282

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By

(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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 Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Incorporated NYSE Rules 12 (“Business Day”) and 282 (Buy-in Procedures), and to delete Incorporated NYSE Rule 177 (Delivery Time—“Cash” Contracts)² to conform to the proposed rule change by the New York Stock Exchange, LLC (“NYSE”) to its versions of Rules 12, 177 and 282.³

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets. Brackets appearing in rule text denoted by braces { }.

* * * * *

Rule 12. “Business Day”

Except as may be otherwise determined by the Exchange as to particular days, the term "business day" means any day on which the Exchange is open for business:

¹ 15 U.S.C. 78s(b)(1).

² 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).

³ See File No. SR-NYSE-2009-17.

provided, however, on any business day that the banks, transfer agencies and depositories for securities in New York State are closed:

- (1) Deliveries or payments ordinarily due on such a day [(exclusive of "cash" contracts made on such a day)] shall be due on the following business day;
- (2) such a day shall not be considered as a business day in determining the day for settlement of a contract, the day on which stock shall be quoted ex-dividend or ex-
rights, or in computing interest on contracts in bonds or premiums on loans of securities; and
- (3) the right to mark to the market, to make reclamation, or to close contracts under Rule 284 {¶2284} [(other than "cash" contracts made on such a day)] shall not be exercised on such a day.

For list of holidays on which the Exchange will not be open for business see [¶2051.10] Rule 51.

* * * * *

[Rule 177. Delivery Time—"Cash" Contracts]

[Deliveries against transactions made for "cash" at or before 2:00 p.m. shall be due before 2:30 p.m. Deliveries against transactions made for "cash" after 2:00 p.m. shall be due within thirty minutes after the time of the transaction.]

* * * * *

Rule 282. Buy-in Procedures

A contract in securities, except a contract where its close-out is governed by the rules of a Qualified Clearing Agency, which has not been completed by the seller in accordance with its terms, may be closed-out by the buyer (i.e., the initiating

member organization) no sooner than three business days after the due date for delivery, pursuant to the following procedures:

(a) through (c) No Change.

(d) Where the buyer is a customer (i.e., other than another member organization), upon failure of a defaulting member organization to effect delivery in accordance with a "buy-in" notice, the contract may be closed-out by purchasing for ["cash" in the best available market, or at the option of the initiating member organization, for] guaranteed delivery for all or any part of the securities necessary to complete the contract. "Buy-ins" executed in accordance with this paragraph shall be for the account and risk of the defaulting member organization.

(e) through (k) No Change.

* * * * *

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on March 13, 2009.

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

(a) Purpose

FINRA is proposing changes to Incorporated NYSE Rules 12,⁴ 177⁵ and 282⁶ to conform these rules to recent amendments made by NYSE. The NYSE’s amendments remove references to certain settlement instructions that are no longer compatible with the NYSE’s electronic market. These include instructions to settle on “cash,” “next day” or “seller’s option” basis.

As described by the NYSE in its filing,⁷ in the NYSE’s current environment, orders received by NYSE systems that are marketable upon entry are eligible to be immediately and automatically executed. According to the NYSE, order types and settlement instructions that require manual intervention pose significant impediments to the efficient functioning of the NYSE’s market. In addition, the NYSE states that the ability to have market participants’ orders executed in the most efficient manner necessitates the elimination of cash, next day and seller’s option as valid settlement instructions for orders submitted to the NYSE. It adds that because these instructions result in the orders printing to paper, the manual intervention required in the processing of these orders puts the orders at the very real risk of “missing the market” as a result of the current speed of order execution in the NYSE market. Under the NYSE filing,

⁴ Incorporated NYSE Rule 12 defines the term “business day.”

⁵ Incorporated NYSE Rule 177 states the delivery time for “cash” contracts.

⁶ Incorporated NYSE Rule 282 sets forth buy-in procedures.

⁷ See supra note 3.

references to cash, next day and seller's option were deleted from NYSE Rules 12 ("Business Day") and 282 (Buy-in Procedures) as valid settlement instructions for orders submitted to the NYSE. In addition, the NYSE eliminated NYSE Rule 177 (Delivery Time—"Cash" Contracts).⁸

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 12, 177 and 282 to ensure consistency with NYSE's versions of Rules 12, 177 and 282.⁹

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules 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

⁸ Id.

⁹ 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). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR-NASD-2007-054).

¹⁰ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that the proposed rule change is necessary and appropriate to reduce the risk of customers missing the market and possibly receiving inferior priced executions because of legacy NYSE settlement instructions and to maintain consistency with the NYSE's amendments to its Rules 12, 177 and 282.

4. 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.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹¹ and paragraph (f)(6) of Rule 19b-4 thereunder,¹² in that the proposed rule change does not significantly affect the protection of investors or the public interest; and does not impose any significant burden on competition. FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),¹³

¹¹ 15 U.S.C. 78s(b)(3).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

such that waiver of the 30 day pre-operative requirement permits FINRA to implement its rule changes on March 13, 2009, the same date that NYSE's amendments are implemented. This will allow FINRA's Incorporated NYSE Rules to maintain their status as Common Rules under the Agreement.

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

The proposed rule change is based on the changes in SR-NYSE-2009-17.¹⁴

9. Exhibits

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

¹⁴ See supra note 3.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2009-007)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Incorporated NYSE Rules 12 (“Business Day”) and 282 (Buy-in Procedures), and to Delete Incorporated NYSE Rule 177 (Delivery Time—“Cash” Contracts) to Eliminate the Ability to Enter Orders on the NYSE with Settlement Instructions of “Cash,” “Next Day” and “Seller’s Option”

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 , 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, II, and III 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 12 (“Business Day”) and 282 (Buy-in Procedures), and to delete Incorporated NYSE Rule 177 (Delivery

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Time—“Cash” Contracts)⁴ to conform to the proposed rule change by the New York Stock Exchange, LLC (“NYSE”) to its versions of Rules 12, 177 and 282.⁵

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

FINRA is proposing changes to Incorporated NYSE Rules 12,⁶ 177⁷ and 282⁸ to conform these rules to recent amendments made by NYSE. The NYSE’s amendments

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-2009-17.

⁶ Incorporated NYSE Rule 12 defines the term “business day.”

remove references to certain settlement instructions that are no longer compatible with the NYSE's electronic market. These include instructions to settle on "cash," "next day" or "seller's option" basis.

As described by the NYSE in its filing,⁹ in the NYSE's current environment, orders received by NYSE systems that are marketable upon entry are eligible to be immediately and automatically executed. According to the NYSE, order types and settlement instructions that require manual intervention pose significant impediments to the efficient functioning of the NYSE's market. In addition, the NYSE states that the ability to have market participants' orders executed in the most efficient manner necessitates the elimination of cash, next day and seller's option as valid settlement instructions for orders submitted to the NYSE. It adds that because these instructions result in the orders printing to paper, the manual intervention required in the processing of these orders puts the orders at the very real risk of "missing the market" as a result of the current speed of order execution in the NYSE market. Under the NYSE filing, references to cash, next day and seller's option were deleted from NYSE Rules 12 ("Business Day") and 282 (Buy-in Procedures) as valid settlement instructions for orders submitted to the NYSE. In addition, the NYSE eliminated NYSE Rule 177 (Delivery Time—"Cash" Contracts).¹⁰

⁷ Incorporated NYSE Rule 177 states the delivery time for "cash" contracts.

⁸ Incorporated NYSE Rule 282 sets forth buy-in procedures.

⁹ See supra note 3.

¹⁰ Id.

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 12, 177 and 282 to ensure consistency with NYSE's versions of Rules 12, 177 and 282.¹¹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that FINRA rules 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 reduce the risk of customers missing the market and possibly receiving inferior priced executions because of legacy NYSE settlement instructions and to maintain consistency with the NYSE's amendments to its Rules 12, 177 and 282.

¹¹ 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). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR-NASD-2007-054).

¹² 15 U.S.C. 78o-3(b)(6).

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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 [insert SR-FINRA-2009-007] 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 [insert SR-FINRA-2009-007]. 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 [insert SR-FINRA-2009-007] 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.¹⁵

Elizabeth M. Murphy

Secretary

¹⁵ 17 CFR 200.30-3(a)(12).