

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2010
Estimated average burden
hours per response.....38

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

File No. SR - 2009 - 038

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) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

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 Repeal Incorporated NYSE Rules 134 and 440I as Part of the Process to Develop the Consolidated FINRA Rulebook

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

Add

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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

Add

Remove

View

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

☐

Exhibit 3 - Form, Report, or Questionnaire

Add

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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

Add

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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

Add

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View

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 repeal Incorporated NYSE Rule 134 (Differences and Omissions – Cleared Transactions) and Incorporated NYSE Rule 440I (Records of Compensation Arrangements – Floor Brokerage), as part of the process of developing the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 16, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to repeal NYSE Incorporated Rule 134 (Differences and Omissions – Cleared Transactions) and NYSE Incorporated Rule 440I (Records of Compensation Arrangements – Floor Brokerage), to remove rules that are specific to the New York Stock Exchange, LLC (“NYSE”) marketplace and relate primarily to activities by floor brokers.

Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions)

The proposed rule change would repeal Incorporated NYSE Rule 134, which sets forth procedures for clearing member firms to identify uncomparing transactions and resolve them by making any necessary additions, deletions or changes to their data on the facility system. The rule provides guidelines for the review of uncomparing transactions by clearing member firms and details the manner and timing of notifications that must be provided and the types of records that must be maintained.

Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all bona fide error transactions are processed and recorded. The

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).

rule defines an “error” to include an execution outside of an order’s written instructions (e.g., wrong security, wrong side of the market, outside the limit price, over buying or selling, duplicate execution, etc.) or missing the market on a “held” order. In such cases, floor brokers use their error account to assume or acquire a position as a result of a legitimate error. Floor brokers are required pursuant to the rule to maintain a signed, time-stamped record, including supporting documentation of such error. The rule further requires every member not associated with a member organization, and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage based on execution of orders on the floor to report to the NYSE error transactions in such member's or his or her member organization's account which result in a profit of more than \$500 for any transaction, or for more than \$3,000 in any calendar week. Such reports must contain a detailed record of the errors and liquidating transactions.

FINRA is proposing to delete Incorporated NYSE Rule 134 from the Transitional Rulebook and not adopt the rule into the Consolidated FINRA Rulebook because the rule is narrowly directed to the trading activities of NYSE floor brokers. FINRA believes that it is not necessary to transfer NYSE Rule 134 into the Consolidated FINRA Rulebook because the resolution of trading errors on the NYSE and recordkeeping of error accounts is specific to the NYSE.³

³ In addition to being subject to SEC and FINRA rules, Dual Members also remain subject to the NYSE’s rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 134 for its own purposes.

Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage)

The proposed rule change would also repeal Incorporated NYSE Rule 440I, which requires each member and member organization that is “primarily engaged as an agent in executing transactions on the Floor of the Exchange” (e.g., \$2 brokers or independent brokers) to maintain certain records of compensation arrangements in excess of \$5,000 per year. The records must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect. The rule applies only if the member or member organization derives at least 75 percent of its revenue from floor brokerage. The rule also excludes any compensation arrangement involving the transmission of orders solely through the NYSE’s electronic order routing system.

NYSE Rule 440I was adopted in 1999 following an SEC order relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) of the Act,⁴ Rule 11a-1 thereunder,⁵ and NYSE Rules 90, 95, and 111, which relate to conduct by floor brokers.⁶ NYSE Rule 440I was adopted to enhance the NYSE’s oversight of floor brokerage compensation arrangements while also fulfilling some of the requirements imposed by the SEC’s order. Thus, the NYSE determined to

⁴ 15 U.S.C. 78k(a).

⁵ 17 CFR 240.11a-1.

⁶ See Securities Exchange Act Release No. 41996 (October 8, 1999), 64 FR 56560 (October 20, 1999). Subject to certain exceptions, these provisions generally prohibit exchange members from effecting transactions on the floor of an exchange for their own accounts, the accounts of associated persons, or an account over which they or their associated persons have investment discretion. See also Securities Exchange Act Release No. 41574, Admin. Proceeding File No. 3-9925 (June 29, 1999).

limit the rule to floor brokers and exclude other members in part because “the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base.”⁷

The proposed rule change would delete Incorporated NYSE Rule 440I from the Transitional Rulebook and would not adopt the rule into the Consolidated FINRA Rulebook. NYSE Rule 440I was adopted following the issuance of an SEC order to enhance the NYSE’s ability to surveil the activity and compensation arrangements of floor brokers and to examine for their compliance with Section 11(a) of the Act, Rule 11a-1 thereunder, and NYSE Rules 90, 95, and 111.⁸ FINRA does not believe it is necessary to incorporate NYSE Rule 440I into the Consolidated FINRA Rulebook.⁹

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

⁷ See Securities Exchange Act Release No. 41441 (May 24, 1999), 64 FR 29723 (June 2, 1999).

⁸ NYSE Rules 90, 95, and 111 were not incorporated into the Transitional FINRA Rulebook. Those rules, however, remain part of the NYSE’s rulebook.

⁹ In addition to being subject to SEC rules (including SEA Rule 17a-4(b)(7) (requiring every member, broker, or dealer to retain all written agreements (or copies thereof) entered into by such member, broker, or dealer relating to its business as such, including agreements with respect to any account) and FINRA rules, Dual Members also remain subject to the NYSE’s rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 440I for its own purposes.

(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 interest. FINRA believes that the proposed rule change would remove rules that are specific to the NYSE marketplace and relate primarily to activities by floor brokers. The proposed rule change would also advance the development of a more efficient and effective Consolidated FINRA Rulebook.

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**

FINRA 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.¹¹

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

Not applicable.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(2).

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

Not applicable.

9. Exhibits

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-038)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Repeal Incorporated NYSE Rule 134 (Differences and Omissions – Cleared Transactions) and NYSE Rule 440I (Records of Compensation Arrangements – Floor Brokerage) as Part of the Process to Develop the Consolidated FINRA Rulebook

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. 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 repeal Incorporated NYSE Rule 134 (Differences and Omissions – Cleared Transactions) and Incorporated NYSE Rule 440I (Records of Compensation Arrangements – Floor Brokerage), as part of the process of developing the consolidated FINRA rulebook.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to repeal NYSE Incorporated Rule 134 (Differences and Omissions – Cleared Transactions) and NYSE Incorporated Rule 440I (Records of Compensation Arrangements – Floor Brokerage), to remove rules that are specific to the New York Stock Exchange, LLC ("NYSE") marketplace and relate primarily to activities by floor brokers.

Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions)

The proposed rule change would repeal Incorporated NYSE Rule 134, which sets forth procedures for clearing member firms to identify uncomparated transactions and

³ 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).

resolve them by making any necessary additions, deletions or changes to their data on the facility system. The rule provides guidelines for the review of uncomparing transactions by clearing member firms and details the manner and timing of notifications that must be provided and the types of records that must be maintained.

Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all bona fide error transactions are processed and recorded. The rule defines an “error” to include an execution outside of an order’s written instructions (e.g., wrong security, wrong side of the market, outside the limit price, over buying or selling, duplicate execution, etc.) or missing the market on a “held” order. In such cases, floor brokers use their error account to assume or acquire a position as a result of a legitimate error. Floor brokers are required pursuant to the rule to maintain a signed, time-stamped record, including supporting documentation of such error. The rule further requires every member not associated with a member organization, and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage based on execution of orders on the floor to report to the NYSE error transactions in such member's or his or her member organization's account which result in a profit of more than \$500 for any transaction, or for more than \$3,000 in any calendar week. Such reports must contain a detailed record of the errors and liquidating transactions.

FINRA is proposing to delete Incorporated NYSE Rule 134 from the Transitional Rulebook and not adopt the rule into the Consolidated FINRA Rulebook because the rule is narrowly directed to the trading activities of NYSE floor brokers. FINRA believes that it is not necessary to transfer NYSE Rule 134 into the Consolidated FINRA Rulebook

because the resolution of trading errors on the NYSE and recordkeeping of error accounts is specific to the NYSE.⁴

Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage)

The proposed rule change would also repeal Incorporated NYSE Rule 440I, which requires each member and member organization that is “primarily engaged as an agent in executing transactions on the Floor of the Exchange” (e.g., \$2 brokers or independent brokers) to maintain certain records of compensation arrangements in excess of \$5,000 per year. The records must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect. The rule applies only if the member or member organization derives at least 75 percent of its revenue from floor brokerage. The rule also excludes any compensation arrangement involving the transmission of orders solely through the NYSE’s electronic order routing system.

NYSE Rule 440I was adopted in 1999 following an SEC order relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) of the Act,⁵ Rule 11a-1 thereunder,⁶ and NYSE Rules 90, 95, and 111,

⁴ In addition to being subject to SEC and FINRA rules, Dual Members also remain subject to the NYSE’s rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 134 for its own purposes.

⁵ 15 U.S.C. 78k(a).

⁶ 17 CFR 240.11a-1.

which relate to conduct by floor brokers.⁷ NYSE Rule 440I was adopted to enhance the NYSE's oversight of floor brokerage compensation arrangements while also fulfilling some of the requirements imposed by the SEC's order. Thus, the NYSE determined to limit the rule to floor brokers and exclude other members in part because "the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base."⁸

The proposed rule change would delete Incorporated NYSE Rule 440I from the Transitional Rulebook and would not adopt the rule into the Consolidated FINRA Rulebook. NYSE Rule 440I was adopted following the issuance of an SEC order to enhance the NYSE's ability to surveil the activity and compensation arrangements of floor brokers and to examine for their compliance with Section 11(a) of the Act, Rule

⁷ See Securities Exchange Act Release No. 41996 (October 8, 1999), 64 FR 56560 (October 20, 1999). Subject to certain exceptions, these provisions generally prohibit exchange members from effecting transactions on the floor of an exchange for their own accounts, the accounts of associated persons, or an account over which they or their associated persons have investment discretion. See also Securities Exchange Act Release No. 41574, Admin. Proceeding File No. 3-9925 (June 29, 1999).

⁸ See Securities Exchange Act Release No. 41441 (May 24, 1999), 64 FR 29723 (June 2, 1999).

11a-1 thereunder, and NYSE Rules 90, 95, and 111.⁹ FINRA does not believe it is necessary to incorporate NYSE Rule 440I into the Consolidated FINRA Rulebook.¹⁰

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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 would remove rules that are specific to the NYSE marketplace and relate primarily to activities by floor brokers. The proposed rule change would also advance the development of a more efficient and effective Consolidated FINRA Rulebook.

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.

⁹ NYSE Rules 90, 95, and 111 were not incorporated into the Transitional FINRA Rulebook. Those rules, however, remain part of the NYSE's rulebook.

¹⁰ In addition to being subject to SEC rules (including SEA Rule 17a-4(b)(7) (requiring every member, broker, or dealer to retain all written agreements (or copies thereof) entered into by such member, broker, or dealer relating to its business as such, including agreements with respect to any account) and FINRA rules, Dual Members also remain subject to the NYSE's rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 440I for its own purposes.

¹¹ 15 U.S.C. 78o-3(b)(6).

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

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-FINRA-2009-038 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-038. 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-2009-038 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.¹²

Florence E. Harmon

Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Text of Incorporated NYSE Rules to be Deleted In Their Entirety from the Transitional Rulebook

* * * * *

Incorporated NYSE Rules

[Rule 134. Differences and Omissions-Cleared Transactions]

[("QTs")]

[(a)] When a clearing member organization submits a transaction in a listed stock or in a listed bond which it executed on the Exchange to the Exchange or to a Qualified Clearing Agency pursuant to the rules of such Exchange or Qualified Clearing Agency as a comparison item, and learns that it is uncomparing, it shall resolve such comparison item on the first business day after the trade date through the facilities of the Correction System (the "System") during the time that such System is available for use.]

[(b)] Beginning on the morning of the first business day after the trade date, it shall be the responsibility of each clearing member organization to review its file of uncomparing transactions, if any, displayed on a terminal provided by the Exchange for such purpose and make any necessary additions, deletions or changes to its data no later than 12:00 PM on that same day. When a clearing member organization adds an uncomparing transaction to its file, it must include the time of the execution and the badge number of its executing broker and the badge number of the contra-broker.]

[(c) Beginning at 12:01 PM on the first business day after the trade date (or earlier in the case of transactions effected for delivery on the business day following the day of the transaction), the clearing member organization's members that executed the uncomparing transactions shall begin to resolve such uncomparing transactions by comparing their records with the data displayed on the terminal by the contra-parties to the transactions.]

[(1) When the executing broker for the clearing member organization is a "\$2" broker or a specialist, the clearing member organization shall notify the "\$2" broker or the specialist of the uncomparing transaction by presenting him with a copy of the details of the transaction produced by the System. Such notification shall be made no later than 1:00 PM on the first business day after the trade date. The clearing member organization shall provide the "\$2" broker or the specialist with copies of all relevant Floor Reports at the same time the uncomparing trade is presented.]

[(2) When a clearing member organization has an uncomparing transaction which it submitted to comparison (but did not execute) for a non-clearing member organization, it shall notify the non-clearing member organization of the uncomparing trade by presenting it with a copy of the details of the trade produced by the System.]

[Such notification shall be made no later than 1:00 PM on the first business day after the trade date. The member of the non-clearing member organization that executed the uncomparing transaction shall begin immediately to resolve the trade. If a "\$2" broker or a specialist executed the transaction on behalf of the non-clearing member, he shall be

provided with copies of all relevant Floor Reports at the same time the uncomparing trade is presented.]

[(d)]

[(i)] No member shall be permitted to effect transactions on the Floor unless such member: (a) maintains an error account at a registered broker or dealer in his or her name, or in the name of his or her member organization; or (b) such member participates in an error account established for a group of members (“group error account”). A member shall maintain only one error account as referenced above for the resolution of errors.]

[(ii)] Any transaction effected on the Floor which results in a member or member organization assuming or acquiring a position in a security as a result of an error and any transaction initiated on the Floor by a member to offset a transaction made in error shall be cleared in the member's or his or her member organization's error account or group error account unless the customer accepts the error transaction, or the specialist in the security accepts the error transaction as a trade on “account of error”. Any transaction initiated on the Floor by a member to offset a transaction made in error shall be evidenced by a time stamped order ticket indicating that the transaction is to cover an error.]

[(iii)] Records as to all errors shall be maintained by the member or his or her member organization. Such records shall include the audit trail data elements prescribed in Rule 132, as well as the nature and amount of the error, the means whereby the member resolved the error with the member or member organization that cleared the error trade on the member's behalf, the aggregate amount of

liability that the member has incurred and has outstanding, as of the time each such error trade entry is recorded, and such other information as the Exchange may from time to time require.]

[(iv) When a clearing member organization ceases to carry a member's or member organization's error account, the clearing member organization must notify the Exchange in writing immediately, but in no event later than the opening of trading on the following business day.]

[(v) No trading may take place in an error account that is not related to an error.]

[• • • *Supplementary Material:* -----]

[.10 The term “registered broker or dealer” as used in this Rule shall mean any broker or dealer registered in accordance with Section 15(b) of the Securities Exchange Act of 1934.]

[.20 An error may be resolved by the customer accepting the error transaction as executed and a member or member organization paying the customer to settle the amount of the error (a “difference check”). Detailed records of the type contained in (d)(iii) shall be maintained by the member or member organization of each transaction which resulted in a difference check of more than \$500, or for which a customer refused a difference check of any amount.]

[.30 If the customer does not accept the erroneous transaction and the order cannot be executed on its original terms or better in the then current market, the member must issue a report from the member's or his or her member organization's error account, or with the prior approval of the specialist, from the specialist's account. Such report may be

confirmed to the customer as an Exchange transaction provided there is a liquidation transaction on the Exchange in the error account.]

[.40 Every member not associated with a member organization, and every member associated with a member organization which derives at least 75% of its revenue from floor brokerage based on execution of orders on the Floor shall report to the Exchange error transactions in such member's or his or her member organization's account which result in a profit of more than \$500 for any transaction, or for more than \$3,000 in any calendar week. Such reports shall contain a detailed record of the errors and liquidating transaction.]

[(e)]

[(i) Clearing member organizations shall resolve all uncomparing transactions as either OK or DK no later than 6:00 PM on the first business day after the trade date by inserting the appropriate response next to each uncomparing transaction contained in the System's file; provided, however, that if the transaction is for delivery on the business day following the day of the transaction, it shall be resolved no later than 2:00 PM on such day.]

[(ii) In order that clearing member organizations can comply with the above requirement, "\$2" brokers, specialists and non-clearing members having uncomparing transactions presented to them must respond no later than 5:00 PM, except when a non-clearing member organization has re-transmitted an uncomparing trade to a "\$2" broker or a specialist, the non-clearing member has until 5:30 PM to respond to its clearing member organization.]

[(iii)] The time requirements set forth in Paragraphs (b), (c) and (e) may be changed from time to time as the Exchange may determine. However, the time for resolving transactions as either OK or DK set forth in Paragraph (e)(i) shall not be extended past the time that the System is available for use on any business day.]

[(f)]

[(i)] Transactions agreed upon as OK by a clearing member organization by entering the appropriate response into the System may not be subsequently DK'd by the clearing member. Transactions agreed upon as DK by a clearing member organization by entering the appropriate response into the System may not be subsequently OK'd by the clearing member.]

[(ii)] Transactions which have been DK'd by a clearing member organization by entering the appropriate response into the System may be closed out by the questioning firm under the provisions of Rule 282 and the printed record of such response produced by the System shall constitute the notice requirement of Rule 282.]

[(g)] For the purposes of this rule an “error” occurs as described in this subsection (g) and (h) below. When an order is executed outside of the customer instructions as entered in the electronic order tracking system of the Exchange pursuant to Rule 123(e). This includes, but is not limited to:]

[(i)] When a held or a not held order is executed in:]

[(a)] the wrong security; or]

[(b)] on the wrong side of the market; or]

[(c) at a price outside the limit price of the order; or]

[(d) is over bought or over sold; or]

[(e) duplicates an execution.]

[(ii) When an error is committed in the execution of a not held order as it relates to symbol, side, or price as noted in (i) above, which causes such not held order to remain unexecuted.]

[(h) When: (i) there is a failure to execute a held order when market conditions permitted; or (ii) when a not held order remains unexecuted, in whole or in part, due to the order being lost or misplaced, or as a result of a system malfunction. A system malfunction is the failure of physical equipment, devices and/or programming employed by the Floor broker or otherwise provided by the Exchange and used in the execution of orders.]

[(i) The Floor broker must maintain a signed, time-stamped record, including supporting documentation of such error.]

[(j)]

[(i) For the types of errors referred to in (h)(ii) above, such record and supporting documents must be provided to the Exchange Division of Market Surveillance prior to the opening of the Floor on the next trade date following the error.]

[(ii) With respect to the errors described in (h)(ii) above, the Floor broker may execute the order in alignment with half the volume of each Exchange tape print up to the size of the order between the time that the order was entered and the time that the Floor Broker realized that the order was lost, misplaced or not executed as a result of a system malfunction. If executing half the volume of an

order based on the Exchange tape print would result in more than a unit of trading, but not a multiple thereof (such as 150 shares), the customer would be entitled to the nearest full unit of shares rounded down (such as 100 shares).]

[(iii) If the Floor broker fails to provide sufficient documentation, (which must include, but is not limited to, the date and time of the error, the date and time the error was discovered, the size of the error, the stock in which the error occurred, the original instructions, the names of all involved parties including the client and any upstairs trader, a detailed narrative of how the error occurred, detail narrative of discussions with relevant parties, the steps taken to correct the error and the ultimate resolution of the error) prior to the next trade date following the error, the Floor broker is prohibited from relying on the provisions of (j)(ii) above.]

[• • • **Supplementary Material:** -----]

[.10 Orders Stored in the Opening Automated Report Service]

[Differences and omissions with respect to transactions involving orders stored in the Opening Automated Report Service shall be resolved pursuant to the procedures set forth in Rule 115A.30.]

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[Rule 440I. Records of Compensation Arrangements—Floor Brokerage]

[(a) Every member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange must maintain a written record including a description of each type of compensation arrangement entered into with other members, member organizations, non-

member organizations and customers in connection with transactions executed on the Floor of the Exchange.]

[(b) Records maintained in accordance with paragraph (a) of this Rule must identify, by name, the members, member organizations, non-member organizations and customers who are parties to each type of compensation arrangement in effect.]

[• • • *Supplementary Material:* -----]

[.10 For purposes of paragraphs (a) and (b) of this Rule 440I, the requirement to maintain a written record of each type of compensation arrangement shall not apply to:]

[(a) any compensation arrangement wherein a member or member organization receives gross compensation of less than \$5,000 per year from any member, member organization, non-member organization or customer; or]

[(b) any compensation arrangement involving transmission of orders solely through the Exchange's electronic order routing system.]

[.20 A member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.]

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