

event to the BCC as a fourth violation under the current rule, such violations should be batched together and treated as one violation. This way, pursuant to the revised rules, the firm would receive a warning letter for the first three batched violations before being subject to a monetary fine. The Exchange further noted that it could, in any particular situation, deem the violations to be egregious rather than “minor” and refer the matter directly to the BCC for disciplinary action. The Exchange believes that this approach is appropriate because the relevant warning letters or monetary fines should serve as a deterrent against future violations, while recognizing that a single programming error can have a widespread effect. In addition, the Exchange believes that Advice F-6 (and its corresponding rule) is appropriate for batching because the automated surveillance for quote spread parameter compliance,<sup>5</sup> as well as the issuance of sanctions pursuant to the minor rule plan,<sup>6</sup> will be conducted daily.

After careful review, 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 exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission

believes that the proposed changes to the MRP should strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>10</sup> which governs minor rule violation plans.

The Commission believes that the Exchange’s proposal to amend Advice F-6 to add rule text referencing quote spread parameters for options that are quoted electronically is appropriate because the text was inadvertently omitted. In addition, the Commission believes that batching of violations of the quote spread parameter rule, under the MRP, reasonably addresses quoting violations on an electronic market, where one inadvertent error can potentially result in multiple quotes that fall outside the quote spread parameters.

The Exchange has represented it will conduct automated surveillance for quote spread parameter compliance on a daily basis, and will issue sanctions for quote spread violations pursuant to the MRP also on a daily basis. The Commission further notes that pursuant to Rules 960.2(f)(ii) and 970.01, the batching program will continue to require that the violations be determined based on an exception-based surveillance program. Any further proposal by the Exchange to permit the batching of violations of any Exchange rule would be subject to Commission approval.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization’s rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the

recommended amount is appropriate for a violation under the MRP, whether it might not be appropriate to batch a series of actions as a single violation under the MRP, or whether a violation or series of violations may require formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>11</sup> and Rule 19d-1(c)(2) under the Act,<sup>12</sup> that the proposed rule change (SR-Phlx-2010-43) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62146; File No. SR-FINRA-2010-023]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Certain Cross-References and Make a Non-Substantive Technical Change to a FINRA Rule

May 20, 2010.

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> notice is hereby given that on May 4, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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,<sup>3</sup> 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.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Confidential letters from Stephen M. Pettibone, Managing Director Surveillance, Phlx, to Michael Gaw, Assistant Director, Division of Trading and Markets, and Tina Barry, Assistant Director, Office of Compliance Inspections and Examinations, Commission, dated October 6, 2009 and December 30, 2009.

<sup>6</sup> See letter from Charles Rogers, Chief Regulatory Officer, Phlx, to Tina Barry, Assistant Director, Office of Compliance Inspections and Examinations and Michael Gaw, Assistant Director, Division of Trading and Markets, Commission, dated February 18, 2010.

<sup>7</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>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

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

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make a non-substantive technical change to a FINRA rule.

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 in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").<sup>4</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect recent changes adopted in the Consolidated FINRA Rulebook. The proposed rule change would update FINRA Rule 0150 to reflect (1) the

adoption into the Consolidated FINRA Rulebook of FINRA Rule 2261 and the deletion of NASD Rules 2270 and 2910<sup>5</sup> and (2) the deletion of NASD Rules 2450<sup>6</sup> and 2780.<sup>7</sup> The rule cross-references in FINRA Rule 6630<sup>8</sup> would be similarly updated to reflect (1) the adoption of FINRA Rule 2261 and the deletion of NASD Rule 2270<sup>9</sup> and (2) the deletion of NASD Rule 2450.<sup>10</sup> Finally, the rule references in FINRA Rule 9217, which sets forth FINRA's Minor Rule Violation Plan, would be updated to reflect the deletion of Incorporated NYSE Rule 411(b).<sup>11</sup>

In addition, the proposed rule change would make a technical amendment to FINRA Rule 3160 to reflect a change in FINRA's style convention when referencing federal securities regulations.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be June 14, 2010, the date on which the previously approved rule changes will be implemented.<sup>12</sup>

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</sup> 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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

### 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 Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- 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-FINRA-2010-023 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2010-023. 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

<sup>5</sup> See Securities Exchange Act Release No. 61540 (February 18, 2010), 75 FR 8771 (February 25, 2010) (Order Approving File No. SR-FINRA-2009-081).

<sup>6</sup> See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (Order Approving File No. SR-FINRA-2009-093).

<sup>7</sup> See Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR-FINRA-2009-087).

<sup>8</sup> The text of FINRA Rule 6635 has recently been amended and been renumbered as FINRA Rule 6630. The amended rule text is reflected in the attached Exhibit 5. See Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (SEC Approval Order for File No. SR-FINRA-2010-003).

<sup>9</sup> See note 5.

<sup>10</sup> See note 6.

<sup>11</sup> See note 7.

<sup>12</sup> See *Regulatory Notice* 10-21 (April 2010).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 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 *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR-FINRA-2010-023 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62142; File No. SR-NYSE-2010-38]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 413 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

May 20, 2010.

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 May 12, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 proposes to delete NYSE Rule 413 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>4</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

###### 1. Purpose

The purpose of the proposed rule changes is to delete NYSE Rule 413 (Uniform Forms) to correspond with rule changes filed by FINRA and approved by the Commission.

###### Background:

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.<sup>5</sup>

<sup>4</sup> See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (order approving SR-FINRA-2009-093).

<sup>5</sup> See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.<sup>6</sup>

##### Proposed Conforming Amendments to NYSE Rules:

FINRA recently deleted FINRA Incorporated NYSE Rule 413 (Uniform Forms), which required that each member had to adopt such uniform forms as may be prescribed by the Exchange to facilitate the orderly flow of transactions within the financial community.<sup>7</sup>

In deleting FINRA Incorporated NYSE Rule 413, FINRA noted that several provisions in its By-Laws required its members to provide certain information in the manner and form prescribed by FINRA, including membership applications, registration of branch offices, registration of registered representatives and associated persons, and termination of registered employees. FINRA also noted its proposal to adopt a new Rule 4540 governing information and data reporting and filing requirements.<sup>8</sup>

In order to harmonize the NYSE Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rule 413.<sup>9</sup> As with FINRA, the Exchange has a number of rules that require members and member organizations to provide certain information in the manner and form prescribed by the Exchange: for example, NYSE Rules 301(b) and 311-

FR 42166 (August 1, 2007) (SR-NASD-2007-054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

<sup>6</sup> FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

<sup>7</sup> See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

<sup>8</sup> See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

<sup>9</sup> NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSEAmex-2010-45.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.