

5320.<sup>15</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.<sup>16</sup> Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-27 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-NYSEArca-2012-27. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room 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 New York Stock Exchange LLC'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-NYSEArca-2012-27, and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66797; File No. SR-NYSE-2012-09]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Recent Changes to FINRA Rules 7440 and 7450, and To Adopt Recent Changes to FINRA Rule 5320 by Amending Supplementary Material .02 to NYSE Rule 5320 To Require That Member Organizations Report to the Order Audit Trail System Information Barriers Put Into Place by the Member Organization in Reliance on Supplementary Material .02 to NYSE Rule 5320**

April 12, 2012.

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 April 2, 2012, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have

been prepared by the Exchange. 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 (i) adopt recent changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Rule 5320 to require that member organizations report to the Order Audit Trail System ("OATS") information barriers put into place by the member organization in reliance on Supplementary Material .02 to NYSE Rule 5320. The text of the proposed rule change is available at the Exchange, [www.nyse.com](http://www.nyse.com), the Commission's Public Reference Room, and the Commission's Web site at [www.sec.gov](http://www.sec.gov).

#### **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**

The Exchange proposes to (i) adopt recent changes to FINRA Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Rule 5320 to require that member organizations report to OATS information barriers put into place by the member organizations in reliance on Supplementary Material .02 to NYSE Rule 5320.

FINRA recently received Commission approval of changes to the order recording and transmission requirements of the OATS rules in

<sup>15</sup> FINRA has announced that it will implement the changes on April 16, 2012. See *supra* note 9.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</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.

FINRA Rules 7440 and 7450.<sup>3</sup> First, FINRA amended FINRA Rule 7440 to require FINRA members relying on the no-knowledge exception in Supplementary Material .02 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to report information to OATS regarding the information barriers adopted by the member in reliance on the exception—FINRA also added this requirement under Supplementary Material .02 to FINRA Rule 5320. Second, FINRA amended FINRA Rule 7440 to extend, to all OATS-eligible securities, the existing requirement to reflect on OATS reports a customer's instruction regarding display of the customer's limit orders—the requirement previously applied only to limit orders involving NMS stocks. Finally, FINRA amended FINRA Rule 7450 to codify the specific time by which OATS reports must be transmitted to FINRA.

The Exchange recently adopted the NYSE Rule 7400 Series, which consists of NYSE Rules 7410 through 7470 and is based substantially on the FINRA Rule 7400 Series.<sup>4</sup> In this regard, NYSE Rules 7440 and 7450 incorporate by reference the order data recording and transmission requirements of FINRA Rules 7440 and 7450, respectively, by requiring member organizations and associated persons to comply with FINRA Rules 7440 and 7450 as if those rules were part of the Exchange's rules. Accordingly, the Exchange hereby proposes to adopt the changes to FINRA Rules 7440 and 7450 that were approved pursuant to SR-FINRA-2011-063.<sup>5</sup>

The Exchange also recently adopted NYSE Rule 5320, which is substantially the same as FINRA Rule 5320 and prohibits trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order exception, and odd lot and bona fide

error transaction exceptions.<sup>6</sup> The Exchange hereby proposes to adopt as Supplementary Material .02(b) to NYSE Rule 5320 the same language that was approved pursuant to SR-FINRA-2011-063 as Supplementary Material .02(c) to FINRA Rule 5320.<sup>7</sup> Specifically, if a member organization implements and utilizes appropriate information barriers in reliance on the no-knowledge exception provided under Supplementary Material .02 to NYSE Rule 5320, the member organization must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19).

The no-knowledge exception in Supplementary Material .02 to NYSE Rule 5320 provides that if a member organization implements and uses an effective system of internal controls—such as appropriate information barriers—that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, that other trading unit may trade in a proprietary capacity at prices that would satisfy the customer orders held by the separate, walled-off trading unit. Through the use of OATS, FINRA will be able to ascertain, on an automated basis, those member organizations claiming the no-knowledge exception.<sup>8</sup> This will reduce the potential for “false positive” alerts by allowing FINRA to account for the existence of information barriers when running automated surveillance patterns designed to identify inappropriate trading ahead of customer orders. These new requirements should substantially reduce the number of “false positives” that are identified through automated surveillance patterns by permitting FINRA to account for information barriers when trading ahead may otherwise be indicated.

The Exchange proposes to implement the changes proposed herein on the same date that FINRA implements the changes approved pursuant to SR-FINRA-2011-063, thereby eliminating the potential for different regulatory

requirements between common members.<sup>9</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Specifically, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater harmonization between NYSE Rules and FINRA Rules of similar substance and purpose. This would result in less burdensome and more efficient regulatory compliance, which would foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote the protection of investors and the public interest. The changes proposed herein are also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by ensuring that FINRA Rules incorporated by reference in the NYSE Rules and rules that are common to both NYSE and FINRA remain consistent after amendments to the particular FINRA Rules.

### 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.

<sup>9</sup> FINRA has announced that it will implement the changes on April 16, 2012. See <http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P125612>.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR-FINRA-2011-63) [sic].

<sup>4</sup> See Securities Exchange Act Release No. 65523 (October 7, 2011), 76 FR 64154 (October 17, 2011) (SR-NYSE-2011-49).

<sup>5</sup> The Exchange notes that the approved changes to FINRA Rules 7440 and 7450 that the Exchange proposes to adopt would be applicable only to Exchange member organization [sic] that are also FINRA members. In particular, the changes relate to cross-references to FINRA Rule 5320, and for the Exchange, to NYSE Rule 5320, which is not applicable to Proprietary Trading Firms, as defined in Rule 7410(p), because they do not have customers and therefore do not need to maintain information barriers.

<sup>6</sup> See Securities Exchange Act Release No. 65164 (August 18, 2011), 76 FR 53015 (August 24, 2011) (SR-NYSE-2011-43).

<sup>7</sup> For consistency with Exchange rules, the Exchange proposes to change references from “members” in Supplementary Material .02(c) to FINRA Rule 5320 to “member organizations” in proposed Supplementary Material .02(b) to NYSE Rule 5320. The Exchange also proposes to designate the existing text of Supplementary Material .02 to NYSE Rule 5320 as paragraph (a) thereto.

<sup>8</sup> All Exchange member organizations that are subject to NYSE Rule 5320 are also FINRA members, and FINRA reviews compliance with that rule pursuant to an allocation plan under Rule 17d-2 of the Securities Exchange Act of 1934.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective on the same date that FINRA implements the changes to FINRA Rules 7440, 7450, and 5320.<sup>15</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.<sup>16</sup> Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-09 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-2012-09. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room 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 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-2012-09, and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill,

Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66794; File No. SR-BATS-2012-015]

#### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 12, 2012.

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 April 2, 2012, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with 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

The Exchange proposes to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>17</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> FINRA has announced that it will implement the changes on April 16, 2012. See *supra* note 9.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).