

compliance with Interpretation and Policy .01 to CBOE Rule 5.4 or, for options covering Index-Linked Securities approved pursuant to Interpretation and Policy .13(3)(B) to CBOE Rule 5.3, continuing to be an NMS stock listed on a national securities exchange; and (3) the value of the underlying Reference Asset continues to be calculated and available. In addition, the Exchange retains discretion to suspend opening transactions in options on Index-Linked Securities where conditions make further dealings in such options inadvisable.

The Exchange represented that the addition of options on Index-Linked Securities will not have any effect on Exchange rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

### Surveillance

The Commission notes that Exchange has represented that it will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. CBOE further represented that these procedures will be adequate to properly monitor Exchange trading of options on Index-Linked Securities and to deter and detect violations of Exchange rules. This order is based on these representations.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-CBOE-2008-64), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58206; File No. SR-FINRA-2008-022]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Membership Waive-In Process for Certain New York Stock Exchange Members

July 22, 2008.

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 23, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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 substantially 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 amend NASD IM-1013-1, to address the applicability of the consolidated FINRA rules to member firms of the New York Stock Exchange LLC (“NYSE”) that became members of FINRA pursuant to the membership waive-in process set forth in IM-1013-1. The text of the proposed rule change is available at FINRA, the Commission’s Public Reference Room, and <http://www.finra.org>.

#### 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

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. To achieve the transaction’s goal to eliminate duplicative member firm regulation and enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA membership as a condition of being an NYSE member organization (“Mandatory FINRA Membership filing”).<sup>3</sup>

As part of the transaction, FINRA incorporated into its existing rulebook NYSE rules related to member firm conduct (“Incorporated NYSE Rules”). Thus, the current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) the Incorporated NYSE Rules (together referred to herein as the “Transitional Rulebook”).<sup>4</sup> The Incorporated NYSE Rules apply only to Dual Members.<sup>5</sup>

In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to

<sup>3</sup> See Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR-NYSE-2007-67) (amending the definition of “member organization” in NYSE Rule 2(b) to make FINRA membership a condition of being an NYSE member organization with a 60-day grace period for compliance); Securities Exchange Act Release No. 56953 (December 12, 2007), 72 FR 71990 (December 19, 2007) (SR-NYSE-2007-115) (extending the grace period for NYSE-only member organizations to apply for and be approved as FINRA members to June 30, 2008); Securities Exchange Act Release No. 58096 (July 3, 2008), 73 FR 39764 (July 10, 2008) (SR-NYSE-2008-54) (extending the grace period for NYSE-only member organizations to apply for and be approved as FINRA members to December 31, 2008). See also Securities Exchange Act Release No. 56751 (November 6, 2007), 72 FR 64098 (November 14, 2007) (SR-FINRA-2007-19) (amending the definition of “member organization” in FINRA’s NYSE Rule 2(b) to make FINRA membership a condition of being an NYSE member organization).

<sup>4</sup> Pursuant to Rule 17d-2 under the Act, NASD, NYSE and NYSE Regulation Inc. entered into an agreement to reduce regulatory duplication for firms that are members of both FINRA and the NYSE (“Dual Members”) by allocating regulatory responsibilities for the Incorporated NYSE Rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544).

<sup>5</sup> The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

<sup>12</sup> See CBOE Rules 4.11 and 4.12.

<sup>13</sup> See CBOE Rule 12.3.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

enable eligible NYSE member organizations to become FINRA members through an expedited process.<sup>6</sup> Under the process outlined in IM-1013-1, certain NYSE firms were eligible to automatically become FINRA members and to register all associated persons whose registrations were approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department of a signed waive-in membership application. As provided in IM-1013-1, the NYSE firms admitted pursuant to IM-1013-1 (the "Waive-in Firms") currently are subject to the Incorporated NYSE Rules, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities").<sup>7</sup> If a Waive-In Firm seeks to expand its business operations beyond the permitted floor activities, the firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations). Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to the Incorporated NYSE Rules.

FINRA has established a process to develop a new consolidated rulebook ("Consolidated FINRA Rulebook"), which will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.<sup>8</sup> With limited exceptions specified in the Act, the Commission must approve the FINRA Rules prior to their becoming effective in the new Consolidated

FINRA Rulebook. FINRA intends to obtain those approvals through a series of rule filings with the Commission. As the Commission approves new rules for inclusion in the Consolidated FINRA Rulebook and they become effective, FINRA members will become subject to those rules. Members also will remain subject to the rules remaining in the Transitional Rulebook. (The Incorporated NYSE Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with Commission-approved final FINRA Rules, the Transitional Rulebook will be reduced by the elimination of those rules, or sections thereof, that address the same subject matter of regulation. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would amend NASD IM-1013-1 to address the applicability of consolidated FINRA rules to the Waive-In Firms. FINRA believes that the Waive-In Firms should be subject to all consolidated FINRA Rules, unless the rules have a more limited application by their terms. In addition, this amendment is essential because all of the existing Incorporated NYSE Rules currently applicable to the Waive-In Firms are scheduled to be eliminated from the Transitional Rulebook as the consolidated FINRA Rules are adopted and implemented (although it may be the case concepts or parts of Incorporated NYSE Rules will become adopted as part of the consolidated FINRA rules). Absent the proposed rule change, the elimination of the those legacy rules in the Transitional Rulebook applicable to the Waive-In Firms would result in a gap in regulation for such firms.

Accordingly, the proposed rule change would amend IM-1013-1 to specify that the Waive-In Firms will be subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the Incorporated NYSE Rules, provided that their securities business is limited to the permitted floor activities. If a Waive-In Firm seeks to expand its business operations to include any activities other than the permitted floor activities, the firm must continue to apply for and receive approval pursuant to NASD Rule 1017. Upon approval of such expansion, the firm would be subject to all NASD rules, in addition to the consolidated FINRA rules and the Incorporated NYSE Rules (as is the case with the Incorporated NYSE Rules, when the Consolidated FINRA Rulebook is completed, all NASD rules would be

eliminated; although it may be the case that concepts or parts of NASD rules will become adopted as part of the consolidated FINRA rules). FINRA is proposing to continue to require the Waive-In Firms to comply with the Incorporated NYSE Rules and, as applicable, NASD Rule 1017 until such time as these rules are eliminated as part of the adoption of the Consolidated FINRA Rulebook.<sup>8</sup>

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure that members eligible for the waive-in process continue to meet appropriate regulatory standards, resulting in effective and efficient regulation of brokers and dealers, thereby enhancing investor protection.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition 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

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

<sup>8</sup> FINRA notes that the Waive-In Firms will continue to be subject to the content of the NASD Rule 8000 and 9000 Series, insofar as FINRA has filed a rule change to transfer these two rule series, without substantive change, to the Consolidated FINRA Rulebook. See Securities Exchange Release No. 58176 (July 16, 2008) (SR-FINRA-2008-021).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> See Securities Exchange Act Release No. 56653 (October 12, 2007); 72 FR 59127 (October 18, 2007) (SR-NASD-2007-056).

<sup>7</sup> For purposes of IM-1013-1, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations, or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

<sup>8</sup> FINRA issued an *Information Notice* on March 12, 2008 that describes the rulebook consolidation process in greater detail.

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-2008-022 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2008-022. 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-2008-022 and

should be submitted on or before August 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58197; File No. SR-ISE-2008-60]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program

July 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2008, the International Securities Exchange, LLC (the "Exchange" or "ISE") 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 ISE. The ISE has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 is proposing to extend two pilot programs related to its Price Improvement Mechanism ("PIM"). The text of the proposed rule amendment is as follows, with proposed deletions in [brackets], and proposed additions italicized:

\* \* \* \* \*

Rule 723. Price Improvement Mechanism for Crossing Transactions

\* \* \* \* \*

<sup>10</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).

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

Supplementary Material to Rule 723

.01-.02 No Change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 2009 [2008], there will be no minimum size requirements for orders to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 No Change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on July 18, 2009 [2008]. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06-.07 No Change.

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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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange currently has two pilot programs related to its PIM.<sup>5</sup> The current pilot period provided in

<sup>5</sup> See Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving the PIM Pilot (the "Approval Order")); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) (Extending the PIM Pilot for an Additional Year).