

Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to begin listing options overlying the S&P 500 Annual Dividend Index beginning on Tuesday, May 25, 2010.

The Commission believes that acceleration of the operative date is consistent with the protection of investors and the public interest because the Commission has previously considered and approved the listing of options on the S&P 500 Annual Dividend Index and the current proposal raises no new regulatory issues. Acceleration of the operative date will allow the Exchange to list options on the S&P 500 Annual Dividend Index on May 25, 2010, thereby providing investors with an additional investment tool and greater flexibility in meeting their investment objectives without delay. For these reasons, the Commission designates that the proposed rule change become operative on May 25, 2010.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR-CBOE-2010-039 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 No. SR-CBOE-2010-039. 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 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 the CBOE. 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 No. SR-CBOE-2010-039 and should be submitted on or before June 1, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62014; File No. SR-NYSEAMEX-2010-26]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Deleting Rule 446—NYSE Amex Equities and Adopting New Rule 4370—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

April 30, 2010.

#### I. Introduction

On March 11, 2010, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on March 26, 2009.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>6</sup>

#### III. 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, the New York Stock Exchange LLC ("NYSE"), NYSE and FINRA entered into an agreement ("Agreement") to reduce regulatory duplication for their members by

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR-FINRA-2009-036) ("Release No. 34-60534").

<sup>5</sup> See Securities Exchange Act Release No. 61744 (March 19, 2010), 75 FR 14648.

<sup>6</sup> See Release No. 34-60534, *supra* note 4.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</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. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.<sup>7</sup>

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>8</sup>

In 2008, FINRA deleted FINRA Incorporated NYSE Rule 446 (Business Continuity and Contingency Plans) as substantively duplicative of NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).<sup>9</sup> Correspondingly, the Exchange amended Rule 446—NYSE Amex Equities (Business Continuity and Contingency Plans) to remove the existing text and incorporate NASD Rules 3510 and 3520 by reference.<sup>10</sup> Subsequently, FINRA adopted, subject to certain amendments, NASD Rules 3510 and 3520 as consolidated FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).<sup>11</sup>

The Exchange correspondingly proposes to delete Rule 446—NYSE Amex Equities and replace it with proposed Rule 4370—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.<sup>12</sup> The Exchange

<sup>7</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 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>8</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, 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>9</sup> See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving SR—FINRA—2008—036).

<sup>10</sup> See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (order approving SR—NYSEALTR—2008—10).

<sup>11</sup> See Release No. 34—60534, *supra* note 4.

<sup>12</sup> New York Stock Exchange LLC submitted a companion rule filing amending its rules in accordance with FINRA's rule changes, which the Commission has approved. See Securities Exchange Act Release No. 62015 (April 30, 2010) (SR—NYSE—2010—23).

states that the purpose of this is to harmonize the NYSE Amex Equities Rules with the consolidated FINRA Rules. The Exchange states that, as proposed, Rule 4370—NYSE Amex Equities adopts the same language as FINRA Rule 4370, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes that reflect the difference between NYSE Amex's and FINRA's membership structures. The Exchange also states that, in paragraph (f)(2) to proposed NYSE Rule 4370—NYSE Amex Equities, the Exchange has added a cross-reference to Rule 416A—NYSE Amex Equities to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for emergency personnel in accordance with NYSE Amex Equities Rules.

The Exchange also proposes to add Supplementary Material .01 to Rule 4370—NYSE Amex Equities to provide that, for the purposes of the rule, the term "associated person" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws. The Exchange states that this change is necessary to ensure that both proposed Rule 4370—NYSE Amex Equities and FINRA Rule 4370 are fully harmonized.

Finally, the Exchange proposes that the effective date for the proposed rule changes be retroactive to December 14, 2009, the same effective date for the corresponding FINRA rule changes.<sup>13</sup> As a result, there should be no regulatory gaps between the FINRA and NYSE Amex Equities Rules and that, as applicable, the NYSE Amex Equities Rules would maintain their status as Common Rules under the Agreement.<sup>14</sup>

#### IV. Discussion and Commission Findings

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. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a

<sup>13</sup> See FINRA Regulatory Notice 09—60 (October 15, 2009).

<sup>14</sup> As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

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

national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.<sup>16</sup>

The Commission believes that the proposed rule change provides greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for NYSE Amex members. In addition, the Commission believes that retroactive application of the proposed rule change to December 14, 2009, is appropriate to assure that there are no regulatory gaps between FINRA and NYSE Amex Equities Rules, and that, as applicable, the NYSE Amex Rules would maintain their status as Common Rules under the Agreement.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR—NYSEAmex—2010—26), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—62015; File No. SR—NYSE—2010—23]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Deleting NYSE Rule 446 and Adopting New Rule 4370 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

April 30, 2010.

#### I. Introduction

On March 11, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act

<sup>16</sup> In approving the proposed rule change, 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> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30—3(a)(12).

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