

years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired; (b) identity of the underwriting syndicate's members; (c) terms of the purchase; and (d) information or materials upon which the determinations of the Board of the Unaffiliated Management Company were made.

8. Prior to its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Management Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Management Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. Each Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received

pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62572; File No. SR-NYSEAmex-2010-72]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rule 123G—NYSE Amex Equities and Adopting New Rule 5290—NYSE Amex Equities to Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

July 26, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 19, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Rule 123G—NYSE Amex Equities and adopt new Rule 5290—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.⁴ The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at <http://www.sec.gov>, and at <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,

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009) (order approving SR-FINRA-2009-067).

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 Rule 123G—NYSE Amex Equities (Order Entry Practices) and adopt new Rule 5290 (Order Entry and Execution Practices) 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, the New York Stock Exchange LLC ("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"). The Exchange became a party to the Agreement effective December 15, 2008.⁵

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.⁶

⁵ 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.

⁶ 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

Current Rule 123G—NYSE Amex Equities

Rule 123G—NYSE Amex Equities provides that a member, member organization, principal executive, approved person, or registered or non-registered employee thereof, may not engage in conduct that has the intent or effect of unbundling or splitting orders for execution in order to maximize a monetary or in-kind payment received as a result of the execution of such orders. For purposes of the Rule, "monetary or in-kind amounts" include commissions, gratuities, payments for or rebate of fees, or any similar payments of value resulting from the entry of such orders.

Current FINRA Rule 5290

In December 2009, FINRA adopted NASD Rule 3380 (Order Entry and Execution Practices), which governs certain order entry and/or execution practices, as consolidated FINRA Rule 5290, subject to certain modifications.⁷

Consolidated FINRA Rule 5290 is substantially the same as Rule 123G—NYSE Amex Equities; however, consolidated FINRA Rule 5290 applies to the unbundling or splitting of both orders and executions, whereas Rule 123G—NYSE Amex Equities applies only to order entry and not execution.

Proposed Conforming Amendments to NYSE Amex Equities Rules

Even though Rule 123G—NYSE Amex Equities is not part of the Common Rules subject to the rulebook consolidation and harmonization process governed by the Agreement, the Exchange hereby proposes to delete Rule 123G—NYSE Amex Equities and replace it with proposed Rule 5290—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.⁸

As proposed, Rule 5290—NYSE Amex Equities adopts the same language as FINRA Rule 5290, except for substituting for or adding to, as needed, the term "member organization" for the term "member", and making corresponding technical changes. In addition, in order to ensure that both proposed Rule 5290—NYSE Amex

apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

⁷ See Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009). In this filing FINRA also adopted NASD Rule 3120 (Use of Information Obtained in Fiduciary Capacity) as consolidated FINRA Rule 2060. The Exchange does not intend to adopt a corresponding rule at this time.

⁸ NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-2010-54.

Equities and FINRA Rule 5290 are fully harmonized, the Exchange also proposes to add Supplementary Material .01 to Rule 5290—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 also notes that, upon adoption of proposed Rule 5290—NYSE Amex Equities, it intends to add the Rule to the Agreement as a Common Rule for dual NYSE Amex/FINRA members.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,⁹ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that they are 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.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because such waiver will enable the Exchange to immediately implement new Rule 5290—NYSE Amex Equities to prevent any regulatory gaps between the NYSE Amex and FINRA rules. In addition, as noted by the Exchange, Rule 5290—NYSE Amex Equities is consistent with FINRA Rule 5290, which was previously approved by the Commission.¹⁶

Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission. 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. Please include File Number SR-NYSEAmex-2010-72 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-NYSEAmex-2010-72. 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 Exchange. 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-

NYSEAmex-2010-72 and should be submitted on or before August 23, 2010.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62578; File Nos. SR-NYSE-2010-43 and SR-NYSEAmex-2010-53]

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Order Approving Proposed Rule Changes Amending the Exchanges' Rules To Incorporate the Receipt and Execution of Odd-Lot Interest Into the Round Lot Market and Decommission the Use of the "Odd-Lot System"

July 27, 2010.

I. Introduction

On June 9, 2010 and June 10, 2010 respectively, the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex" and, with NYSE, each an "Exchange" and collectively, the "Exchanges") each filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot System." The proposed rule changes were published for comment in the **Federal Register** on June 23, 2010.³ The Commission received one comment letter in support of NYSE's proposal.⁴ This order approves the proposed rule changes.

II. Description of the Proposals

The Exchanges seek to amend their rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ See *id.* 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See *supra* note 4. 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).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 62302 (June 16, 2010), 75 FR 35856; and 62303 (June 16, 2010), 75 FR 35865 (each a "Notice" and collectively, the "Notices").

⁴ See Letter from John N. Jacobs, Chief Operations Officer, Lime Brokerage LLC, dated June 28, 2010 ("Lime Letter"). The Lime Letter generally endorsed the incorporation of odd lots and the odd lot portion of partial round lots into the round lot system.