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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65656; File No. SR-FINRA-2011-062)

October 28, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Repeal Incorporated NYSE Rule 2A (Jurisdiction)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2011, 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. 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 repeal Incorporated NYSE Rule 2A (Jurisdiction) as part of the process of developing a consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA’s website 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ the proposed rule change would repeal NYSE Rule 2A (Jurisdiction) from the FINRA rulebook as described below. NYSE Rule 2A generally addresses jurisdictional authority with respect to, among other things, rulemaking, examinations, disciplinary actions, and listing applications. NYSE Rule 2A was adopted in 2006 as part of the merger between the New York Stock Exchange LLC ("NYSE") and Archipelago Holdings, Inc. in light of the fact that the NYSE Constitution, which contained the jurisdiction provisions for the NYSE, was eliminated in the merger.⁴

The FINRA By-Laws, as approved by the membership and the SEC in 2007, address the powers and authority of the FINRA Board of Governors ("Board") and, together with the

³ 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). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

⁴ See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (Order Approving File No. SR-NYSE-2005-77).

Exchange Act, set forth FINRA's authority and responsibilities as a registered securities association. As outlined below, those matters addressed by NYSE Rule 2A that are relevant to a registered securities association are currently addressed by the FINRA By-Laws and Exchange Act, including jurisdictional authority with respect to:

- rulemaking;⁵
- general supervisory powers over members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE) and their offices, partnership and corporate arrangements, their principal executives, employees and approved persons in connection with their conduct of the business of member organizations;⁶
- jurisdiction to discipline members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE), principal executives, employees and approved persons in connection with their conduct of the business of member organizations; and⁷

⁵ See, e.g., FINRA By-Laws, Article III, Section 2, Article VII, Section 1 and Exchange Act Section 15A.

⁶ See, e.g., supra note 5 and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A. In contrast to the NYSE's jurisdictional provisions, which extend to "approved persons," as defined in NYSE Rule 2(c), FINRA regulates its members and "persons associated with a member," as defined in FINRA By-Laws, Article 1 (rr). With respect to the ability to obtain information regarding members' affiliates, FINRA is addressing such authority as part of a separate proposal. See Regulatory Notice 10-01 (January 2010).

⁷ See, e.g., supra note 5, and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A. Based on earlier Board authority, FINRA repealed NYSE Rule 477 (Retention of Jurisdiction) and continues to use FINRA's retention of jurisdiction provisions in the FINRA By-laws. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-029).

- jurisdiction over any and all other functions of members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE), principal executives, employees and approved persons in connection with the conduct of the business of member organizations in order for the NYSE to comply with its statutory obligation as a self-regulatory organization.⁸

FINRA further notes that other matters addressed by NYSE Rule 2A are not applicable to the operations of a registered securities association that does not operate a listing market or are otherwise unique to the NYSE, including:

- approving applications for the listing and admission of securities to dealings on the NYSE, as well as suspending dealings in and removing securities from listing;
- supervising all matters relating to the collection, dissemination and use of quotations and of reports of prices on the NYSE;
- the power to approve or disapprove any connection or means of communication with the floor and requiring the discontinuance of any such connection or means of communication; and
- disapproving any member acting as a Designated Market Maker or odd-lot dealer on the NYSE.

Therefore, FINRA considers the transfer of NYSE Rule 2A to the Consolidated FINRA Rulebook to be unnecessary and proposes that it be eliminated.⁹

FINRA will announce the implementation date of the proposed rule change in a

⁸ See, e.g., *supra* note 5, and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A.

⁹ FINRA anticipates that the NYSE will retain a version of NYSE Rule 2A.

Regulatory Notice to be published no later than 90 days following Commission approval.

The effective date will be no later than 150 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ 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 that the proposed rule change will streamline and improve FINRA's rulebook by eliminating a rule that is not necessary or appropriate for the Consolidated FINRA Rulebook. As further discussed above, the FINRA By-Laws address the powers and authority of the Board and, together with the Exchange Act, set forth FINRA's authority and responsibilities as a registered securities association.

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

Within 45 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

¹⁰ 15 U.S.C. 78o-3(b)(6).

it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove 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-2011-062 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-2011-062. 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 website (<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 website 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 10:00 a.m. and 3:00 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-2011-062 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

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¹¹ 17 CFR 200.30-3(a)(12).