

606-2429; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at [Michael.gilmore@opm.gov](mailto:Michael.gilmore@opm.gov).

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64506; File No. SR-NYSE-2011-20]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Add New Section 907.00 to the Listed Company Manual That Sets Forth Certain Complimentary Products and Services That Are Offered to Currently and Newly Listed Issuers

May 17, 2011.

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 May 5, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 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 amend the Listed Company Manual (the "Manual") by adding a new Section 907.00 that sets forth certain complimentary products and services that are offered to currently and newly listed issuers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>, and on the Commission's Web site at <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 amend the Manual by adding a new Section 907.00 that sets forth certain complimentary products and services that are offered to currently and newly listed issuers. These products and services are developed or delivered by NYSE or by a third party for use by NYSE-listed companies. Some of these products are commercially available by such third-party vendors. All listed issuers receive the same complimentary products and services through the NYSE Market Access Center. Certain tiers of listed issuers receive additional products and services.

NYSE Market Access Center Euronext has developed a market information analytics platform, complimentary to all listed companies, that is a combination of technology-enabled market intelligence insight and a team of highly skilled market professionals. This platform, called the NYSE Market Access Center, was created to provide issuers with better market insight and information across all exchanges and trading venues. The Market Access Center includes products and services that were either (a) developed by NYSE using proprietary data and/or intellectual property or (b) built by a third party expressly for NYSE-listed companies. Within this platform all issuers have access to tools and information related to market intelligence, education, investor outreach, media visibility, corporate governance, and advocacy initiatives. For example, the Market Access Center offers daily trading summaries; a trading alert system highlighting user-defined trading or market events; a Web site featuring timely content for NYSE-listed senior executives; exclusive events; and the opportunity to exchange ideas and leverage shared experiences with listed company peers; trading information and market data; and a series of institutional ownership reports; weekly economic updates; and regularly scheduled executive educational programming. In addition, the Market Access Center provides all issuers with access to discounted products and services from

the same third-party vendors. A description of all the Market Access Center offerings is available on the Exchange's Web site.<sup>3</sup> All issuers listed on the Exchange have access to the NYSE Market Access Center on the same basis. The products and services currently available through the NYSE Market Access Center have a commercial value of approximately \$50,000.

#### Tiered Products and Services Offered to Certain Companies<sup>4</sup>

In addition to the Market Access Center, NYSE offers products and services to certain currently listed and newly listed issuers on a tiered basis. Currently listed issuers are categorized into two tiers, Tier One and Tier Two. Tier One issuers include U.S. issuers that have 270 million or more total shares of common stock issued and outstanding in all share classes, including and in addition to Treasury shares, and Foreign Private Issuers that have 270 million or more in American Depositary Receipts ("ADRs") issued and outstanding, each calculated annually as of December 31 of the preceding year.<sup>5</sup> Tier Two issuers include U.S. issuers that have 160 million to 269,999,999 total shares of common stock issued and outstanding in all share classes, including and in addition to Treasury shares, and Foreign Private Issuers that have 160 million to 269,999,999 in ADRs issued and outstanding, each calculated annually as of December 31 of the preceding year.

Newly listed issuers similarly are categorized into two tiers, Tier A and Tier B.<sup>6</sup> Tier A includes issuers with a global market value of \$400 million or more based on the public offering price. Tier B includes issuers with a global market value of less than \$400 million based on the public offering price.

#### Products and Services Within Each Tier

In addition to the NYSE Market Access Center products and services,

<sup>3</sup> The Web site address is <http://www.nyse.com/about/listed/1224630025065.html>.

<sup>4</sup> A description of the products and services follows in a later section.

<sup>5</sup> For example, if a company had issued Class A and Class B shares, both classes would be counted in determining total shares issued and outstanding.

<sup>6</sup> The term "newly listed issuers" means U.S. issuers conducting an initial public offering ("IPO"), issuers emerging from bankruptcy, spinoffs (where a company lists new shares in the absence of a public offering), and carve-outs (where a company carves out a business line or division, which then conducts a separate IPO). Newly listed issuers do not include issuers that transfer their listings from another national securities exchange; rather, transferring issuers are eligible for the services available to currently listed issuers, as described above.

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

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

each company in the tiers is offered an identical suite of products and services provided by third-party vendors that the Exchange selects, described in more detail below:

#### Currently Listed Companies

- Tier One companies receive market surveillance and Web-hosting products and services.
- Tier Two companies receive either Web-hosting or market analytics products and services; each company may elect whether to receive Web-hosting or market analytics.

#### Newly Listed Companies

- Tier A companies receive either market surveillance products and services for a period of 12 calendar months from the date of listing or market analytics products and services for a period of 24 calendar months from the date of listing, at each company's election; in addition, Tier A companies receive Web-hosting and news distribution products and services for a period of 24 calendar months from the date of listing.
- Tier B companies receive Web-hosting and news distribution products and services for a period of 24 calendar months from the date of listing.
- At the conclusion of the 24-month period, companies would receive Tier One or Tier Two products and services if they qualified based on total shares or total ADRs issued and outstanding as described above. For example, if an issuer conducted an IPO and became listed as a Tier A company on the Exchange on May 1, 2010, it would receive the Tier A products and services until April 30, 2012. On May 1, 2012, if that issuer qualified for Tier One or Tier Two, it would be eligible to receive the products and services available to the Tier for which it qualified.

#### Description of Products and Services Offered to Tiers

Market surveillance products and services, which have a commercial value of approximately \$45,000 annually, help a company understand factors driving the performance of its stock, sector, and the broader market. Various reports are made available to the company on a daily, weekly, and monthly basis. In addition, analysts employed by the vendors of these products and services, and who are organized by industry, review trading data and are available to discuss their findings with the company.

Web-hosting products and services, which have a commercial value ranging from approximately \$12,000–\$16,000 annually, allow a company to outsource

the investor relations component of their company Web site to a third party for development as well as ongoing maintenance. The hosted Web site generally includes financial reports, an interactive company calendar and email alerts, stock quotes, stock charts, fundamental data, and analyst estimates.

Market analytics products and services, which have a commercial value of approximately \$20,000 annually, provide stock pricing data, news, institutional ownership information, research analyst pricing estimates, key ratios and valuation metrics across multiple companies and indices, and other analytic tools to companies. These market analytics products and services provide more detailed information than is currently available on the Market Access Center. News distribution products and services, which have a commercial value of approximately \$10,000 annually, are used to distribute company news to various media outlets.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act")<sup>7</sup> in general and Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)<sup>9</sup> of the Act in that it is designed to promote just and equitable principles of trade, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change provides greater transparency in the types of products and services offered to currently and newly listed companies. NYSE Market Access Center products and services are available to all listed companies. Additional products and services beyond those provided with the NYSE Market Access Center are made available on a tiered basis to certain companies based on their total shares or total ADRs issued and outstanding or company valuation. NYSE believes that these metrics are positively correlated to increased trading volumes and market activity, and as a result these issuers

have higher demands for the types of products and services provided through the tiers than issuers that do not qualify for one of the tiers.

The Exchange notes that the Market Access Center would continue to be available to all issuers. Furthermore, the Exchange believes that the criteria for satisfying the tiers are transparent and quantitative, and they are applied consistently to all listed companies. As such, the Exchange believes that the products and services are equitably allocated among issuers. In addition, the products and services help issuers to better understand trading patterns and developments associated with their securities. They also benefit shareholders by providing broader access to information about the issuers; for example, Web-hosting may make information about listed companies more accessible on the Internet, and news distribution products and services help distribute timely information about listed companies.

#### 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. In this regard, NYSE notes that it does not have exclusive agreements or arrangements with the vendors providing the products and services, and NYSE may use multiple vendors for the same type of product or service. NYSE also notes that currently listed and newly listed companies would not be required to accept the offered products and services from NYSE, and an issuer's receipt of an NYSE listing is not conditioned on the issuer's acceptance of such products and services. In addition, NYSE notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

#### 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.

#### 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

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-20 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-2011-20. 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 available publicly. All submissions should refer to File No. SR-NYSE-2011-20 and should be submitted on or before June 13, 2011.

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

**Cathy H. Ahn,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64512; File No. SR-FINRA-2011-017]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

May 18, 2011.

#### I. Introduction

On April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend FINRA Rule 5131 (New Issue Allocations and Distributions) to simplify the spinning provision in that Rule and to delay the implementation date of paragraphs (b) and (d)(4) under that Rule. This proposal was published for comment in the **Federal Register** on April 29, 2011.<sup>3</sup> The Commission received no comments regarding the proposal.<sup>4</sup> This order approves this proposed rule change on an accelerated basis.

#### II. Description of the Proposed Rule Change

On November 29, 2010, FINRA issued *Regulatory Notice* 10-60 announcing Commission approval of SR-NASD-

2003-140<sup>5</sup> and designating the effective date of new Rule 5131 (the "Rule") as May 27, 2011.<sup>6</sup>

Paragraph (b) of the Rule (Spinning), implements a recommendation from the IPO Advisory Committee Report<sup>7</sup> to prohibit spinning—*i.e.*, an underwriter's allocation of IPO shares to directors or executives of investment banking clients in exchange for receipt of investment banking business. The primary means by which the Rule prohibits spinning is through a series of prophylactic prohibitions on the allocation of new issues. Specifically, the Rule prohibits allocations of a new issue to any account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest: (A) If the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (B) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (C) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Paragraph (b)(1) requires that members establish, maintain, and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. Because the term "investment banking personnel" is not defined in the Rule, members have raised concern that, if the term is read co-extensively with the definition of "investment banking services," certain necessary functions traditionally performed by syndicate personnel would be prohibited. In light of this unintended consequence, FINRA proposes to delete paragraph (b)(1). FINRA believes that benefits of the anti-spinning provisions can be attained without this particular provision

<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> Securities Exchange Act Release No. 64341 (Apr. 26, 2011), 76 FR 24076 (Apr. 29, 2011) (SR-FINRA-2011-017).

<sup>4</sup> The Commission received one comment whose caption indicated that it was filed in response to this proposal, but whose substance was directed to another proposal by the Commission. See comment letter submitted by Nancy DeTine, dated April 29, 2011.

<sup>5</sup> See Securities Exchange Act Release No. 63010 (September 29, 2010), 75 FR 61541 (October 5, 2010) (Order Approving File No. SR-NASD-2003-140).

<sup>6</sup> See *Regulatory Notice* 10-60 (November 2010) (Approval of New Issue Rule).

<sup>7</sup> *NYSE/NASD IPO Advisory Committee Report and Recommendations* (May 2003). <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p010373.pdf>.