Information Memo

NYSE Regulation, Inc

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NYSE Regulation

Number 12-12
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TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: RULE 5320: REQUIREMENT TO REPORT TO OATS INFORMATION BARRIERS PURSUANT TO RULE 5320.02

I. Overview

In order to further harmonize the New York Stock Exchange, LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") (collectively, the "Exchange") equities rules with FINRA rules, the Exchange has (i) adopted recent changes to FINRA Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopted recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Rule 5320 to require that member organizations report to OATS information barriers put into place by the member organizations in reliance on Supplementary Material .02 to NYSE Rule 5320.[1]

These rule changes are effective on **April 16, 2012**.

II. Description of Rule Changes

On December 21, 2011, the Securities and Exchange Commission approved FINRA's rule proposal to amend its Order Audit Trail System ("OATS") rules.[2] First, FINRA amended FINRA Rule 7440 to require FINRA members relying on the no-knowledge exception in Supplementary Material .02 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to report information to OATS regarding the information barriers adopted by the member in reliance on the exception – FINRA also added this requirement under Supplementary Material .02 to FINRA Rule 5320. Second, FINRA amended FINRA Rule 7440 to extend, to all OATS-eligible securities, the existing requirement to reflect on OATS reports a customer's instruction regarding display of the customer's limit orders – the requirement previously applied only to limit orders involving NMS stocks. Finally, FINRA amended FINRA Rule 7450 to codify the specific time by which OATS reports must be transmitted to FINRA. The effective date of FINRA's rule changes is **April 16, 2012**.[3]

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1 *See* Securities Exchange Act Release Nos. 66797 (April 12, 2012) (SR-NYSE-2012-09) and 66795 (April 12, 2012) (SR-NYSEAmex-2012-21).

2 *See* Securities Exchange Act Release No. 66021 (Dec. 21, 2011), 76 FR 81551 (Dec. 28, 2011) (SR-FINRA-2011-063).

3 *See* http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P125612

The Exchange adopted as Supplementary Material .02(b) to NYSE Rule 5320 the same language that was approved pursuant to SR-FINRA-2011-063 as Supplementary Material .02(c) to FINRA Rule 5320.[4] Specifically, if a member organization implements and utilizes appropriate information barriers in reliance on the no-knowledge exception provided under Supplementary Material .02 to NYSE Rule 5320, the member organization must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19). The Exchange also adopted the changes to FINRA Rules 7440 and 7450 that were approved pursuant to SR-FINRA-2011-063.

The approved changes to FINRA Rules 7440 and 7450 that the Exchange adopted are applicable only to Exchange member organization that are also FINRA members. In particular, the changes relate to cross-references to FINRA Rule 5320, and for the Exchange, to NYSE Rule 5320, which is not applicable to Proprietary Trading Firms, as defined in Rule 7410(p), because they do not have customers and therefore do not need to maintain information barriers.

The effective date of the Exchange's changes to Rule 5320 is **April 16, 2012**, the same date that the FINRA rule changes are effective.

III. Staff Contacts

Questions concerning this Information Memo should be directed to:

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[4] For consistency with Exchange rules, the Exchange changed references from "members" in Supplementary Material .02(c) to FINRA Rule 5320 to "member organizations" in proposed Supplementary Material .02(b) to NYSE Rule 5320. The Exchange also designated the existing text of Supplementary Material .02 to NYSE Rule 5320 as paragraph (a) thereto.