

Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at <http://www.nyse.com>. 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–NYSEAmex–2009–89 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–30544 Filed 12–23–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61176; File No. SR–NYSE–2009–125]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rules 312 and 321 and Adopt New Rules 2262 and 2269 Filed by the Financial Industry Regulatory Authority, Inc.

December 16, 2009.

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> notice is hereby given that, on December 14, 2009, 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 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 amend NYSE Rules 312 and 321 and adopt new Rules 2262 and 2269 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the

Securities and Exchange Commission (the “Commission”). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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, 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 amend NYSE Rules 312 (Changes Within Member Organizations) and 321 (Formation or Acquisition of Subsidiaries) and adopt new Rules 2262 (Disclosure of Control Relationship with Issuer) and 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) 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. (“NYSE”) consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the “Act”), NYSE, NYSE 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”). NYSE Amex LLC (“NYSE Amex”) became a party to the Agreement effective December 15, 2008.<sup>4</sup>

<sup>4</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,

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>5</sup>

**Proposed Conforming Amendments to NYSE Rules.** FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.<sup>6</sup>

Because the protection provided by the new FINRA Rules, as well as existing or proposed FINRA Rules and SEC Rules,<sup>7</sup> is generally broader than that provided by FINRA Incorporated NYSE Rules 312(f) and 321.24, FINRA deleted those rules. Specifically, FINRA noted that, unlike FINRA Incorporated NYSE Rule 312(f)(2), consolidated FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member or member organization makes a recommendation on a security to a customer. In addition, FINRA noted that the requirements of FINRA Incorporated NYSE Rules 312(f)(1) and (3) are sufficiently addressed by consolidated FINRA Rules 2262 and 2269 and other rules. FINRA also noted that, unlike FINRA Incorporated NYSE Rule 321.24, consolidated FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued

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>5</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 (“Dual Members”), 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>6</sup> In its filing, FINRA also adopted NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as consolidated FINRA Rule 5260. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009). NYSE is not adopting this FINRA Rule as it is not applicable to trading on the Exchange.

<sup>7</sup> According to FINRA, the requirements of consolidated FINRA Rules 2262 and 2269 are almost identical to SEA Rules 15c1–5 and 15c1–6, respectively. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (footnotes 4–6).

<sup>20</sup> 17 CFR 200.30–3(a)(12).

<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.

by a subsidiary of the member organization.<sup>8</sup>

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rules 312(f) and 321.24 and replace them with proposed NYSE Rules 2262 and 2269, which are substantially similar to the new FINRA Rules.<sup>9</sup> As proposed, NYSE Rules 2262 and 2269 adopt the same language as FINRA Rules 2262 and 2269, except for substituting for or adding to, as needed, the term "member organization" for the term "member", and making corresponding technical changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>10</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>11</sup> 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 proposed rule changes also support the principles of Section 11A(a)(1)<sup>12</sup> of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual 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 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.

## 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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> 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.<sup>17</sup>

The proposed rule change is based upon the rules of another self-regulatory organization, and as such is not in any way novel or controversial. 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 bring uniformity to the Exchange's and FINRA's rules. Accordingly, the Commission hereby grants the

Exchange's request and designates the proposal operative upon filing.<sup>18</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-125 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-2009-125. 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,<sup>19</sup> 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). 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 met this requirement.

<sup>18</sup> For the 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).

<sup>19</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

<sup>8</sup> See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009).

<sup>9</sup> NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-Amex-2009-89.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSE-2009-125 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. E9-30542 Filed 12-23-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35335]

#### Freedom Rail Management, LLC— Acquisition of Control Exemption— Columbia & Reading Railway Co.

Freedom Rail Management, LLC (FRM), a noncarrier, has filed a verified notice of exemption to acquire control of Columbia & Reading Railway Co. (CORY), a class III rail carrier. Pursuant to a Membership Interest Purchase Agreement between FRM and Railway Management, Inc. (RMI),<sup>1</sup> FRM seeks to purchase a 51 percent membership interest in CORY.<sup>2</sup> FRM currently controls Claremont Concord Railroad (CCRR), a Class III rail carrier. CCRR owns 2 miles of rail line in Claremont, NH, and leases 2 miles of rail line in Lebanon, NH, from the New Hampshire Department of Transportation.

The transaction is expected to be consummated on or after January 10, 2010, the effective date of the exemption.

*FRM states that:* (i) The railroads will not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory

obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 35335 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: December 18, 2009.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. E9-30602 Filed 12-23-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Supplemental Draft Environmental Impact Statement: Northwest I-75/I- 575 Corridor, Cobb and Cherokee Counties, GA (Atlanta Metropolitan Area)

**AGENCY:** Federal Highway  
Administration (FHWA), USDOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the interested parties (public, agencies and tribal governments) that a supplemental draft environmental impact statement (SDEIS) will be prepared for proposed highway improvements on Interstate 75 and Interstate 575 (I-75/I-575) in Cobb and Cherokee Counties, Georgia. The length of the proposed project is 30.70 miles.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodney Barry, Federal Highway Administration, 61 Forsyth Street, Suite 17T100, Atlanta, Georgia, Telephone: 404-562-3630, E-mail: [rodney.barry@fhwa.dot.gov](mailto:rodney.barry@fhwa.dot.gov).

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with Georgia Department of Transportation (GDOT) will prepare a SDEIS to consider environmental impacts of proposed transportation improvements to I-75 and I-575 in the Atlanta metropolitan area. These improvements are collectively referred to as the Northwest Corridor project and are located within the project area, which extends northwesterly along I-75 in Cobb County from I-285 through Marietta, Kennesaw and into Acworth. Within the project area, I-575 extends from I-75 northeasterly into Cherokee County.

A notice of intent announcing the preparation of an environmental impact statement was published in the **Federal Register** on March 9, 2004. FHWA and GDOT issued the Alternative Analysis/Draft Environmental Impact Statement (AA/DEIS) in May 2007.

The AA/DEIS evaluated four build alternatives, three design options and two operational options. The build alternatives included the high-occupancy vehicles (HOV) and truck only lanes (TOL) Alternative, the HOV/TOL/Transportation System Management (TSM) Alternative, the HOV/TOL/Bus Rapid Transit (BRT) Alternative, and the HOV/TOL/Reduced BRT Alternative. The SDEIS will evaluate a proposal that would consist of a two-lane reversible managed alternative and improvements to operations will be analyzed in the SDEIS.

An agency meeting will be held during the development of the SDEIS. Numerous opportunities for public input will be provided. The Northwest Corridor project Web site will be updated to include the SDEIS and there will be outreach to local and state-wide media. Letters describing the new alternative and soliciting comments will be sent to the public, private entities, Federal, State and local agencies. Formal public hearings will take place along the corridor. Public notice will be given announcing the time and place of the public hearings. The SDEIS will be available for public and agency review prior to the public hearings. Comments and questions should be directed to FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Georgia's approved clearinghouse review procedures apply to this program.)

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> RMI is a noncarrier that currently holds a 100% ownership interest in CORY.

<sup>2</sup> CORY owns 2.5 miles of rail line in Lancaster County, PA.