

40% of DE Holdings or from voting interests representing more than 20% of DE Holdings. In addition, the limitations prohibit any member of the Exchange from owning interests representing more than 20% of DE Holdings.

The Commission believes that these provisions in the governing documents of the Exchange, DEI, and DE Holdings should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory and oversight responsibilities under the Act.

#### *D. Electing Directors and Certain Committee Members of the Exchange*

Currently, the DE Holdings Operating Agreement requires DE Holdings, in its capacity as the sole stockholder of the Exchange, to vote all of the outstanding equity of the Exchange owned by DE Holdings and entitled to vote in an election to be voted in favor of the election of (1) those directors nominated by the Nominating Committee of the Exchange ("Exchange Nominating Committee"); and (2) those nominees for the Exchange Nominating Committee and the Exchange Member Nominating Committee nominated in accordance with the governance documents of the Exchange.<sup>33</sup> Because DE Holdings will no longer be a stockholder of the Exchange following the Corporate Reorganization, the Exchange notes that these requirements will no longer apply to DE Holdings.

However, the DEI Bylaws require DEI, in its capacity as the sole stockholder of the Exchange, to cause all outstanding equity of the Exchange owned by DEI and entitled to vote in an election to be voted in favor of the election of (1) those directors nominated by the Exchange Nominating Committee; and (2) those nominees for the Exchange Nominating Committee and the Exchange Member Nominating Committee nominated in accordance with the governance documents of the Exchange.<sup>34</sup> Through these requirements in the DEI Bylaws, the Commission believes that the same procedures governing the election of Exchange directors and Exchange member directors that the Commission approved in the Order will continue to apply following the Corporate Reorganization.<sup>35</sup> Accordingly, the Commission finds that the proposal is

consistent with the requirement in Section 6(b)(3) of the Act that the rules of the Exchange provide for the fair representation of its members in the selection of directors and the administration of the Exchange.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (File No. SR-EDGX-2010-02) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62526; File No. SR-NYSEAmex-2010-68]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule**

July 19, 2010.

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 July 7, 2010, NYSE Amex LLC (the "Exchange" or the "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 temporarily suspend the collection of marketing charges on Customer orders that trade within the Complex Matching Engine contra to a Market Maker. Concurrent with this change we are also proposing to reduce some of the transaction fees associated with executions in the Complex Matching Engine.

A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's

Internet Web site at <http://www.sec.gov>, at the Exchange's principal office, 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, 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange is proposing to temporarily suspend the collection of marketing charges on Customer orders that trade within the Complex Matching Engine contra to a Market Maker. At present, our marketing charges program is designed to allow for the collection of marketing charges from Market Makers who trade contra to electronic Customer orders. The marketing charges accrue to either the Directed Order Market Maker or in the case of a non-directed order, the Specialist or e-Specialist that is in control of the pool of marketing charge monies that accrue from non-directed order flow.

Within our Complex Matching Engine we presently do not have functionality that would permit Market Makers to receive Directed Orders and therefore control the marketing charges associated with those directed Customer orders. Given this limitation, the Exchange feels it is appropriate to suspend the collection of marketing charges for electronic Customer orders executed in the Complex Matching Engine until such a time that we can offer Directed Order functionality within the Complex Matching Engine. Once we create functionality that will allow Directed Order Market Makers can [sic] receive Complex Directed Orders that execute within the Complex Matching Engine, the Exchange will file at that time to reinstate the collection of marketing charges.

Concurrent with this change in marketing charges, the Exchange is also proposing to reduce the transaction charges associated with receiving an

<sup>33</sup> See DE Holdings Operating Agreement, Article VII, Section 7.3(b).

<sup>34</sup> See DEI Bylaws, Article II, Section 2.15(b).

<sup>35</sup> See Order, *supra* note 4, at notes 94-120 and accompanying text, for a discussion of the Exchange's procedures for nominating directors and Exchange member directors.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</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.

execution in the Complex Matching Engine. Presently, the Exchange charges all participants \$.10 per contract except for when orders that originate from the same firm interact with each other in which case the charge is \$.05 per contract. The Exchange intends to reduce the charge for all participants to \$.05 per contract for executions received in the Complex Matching Engine regardless of whether the orders originate from the same firm or not.

These changes are intended to be effective immediately for all transactions beginning July 7, 2010.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

### *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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such 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-NYSEAmex-2010-68 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-2010-68. 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 the filing also will be available for inspection and copying at 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-NYSEAmex-2010-68 and should be submitted on or before August 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-18165 Filed 7-23-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62533; File No. SR-FINRA-2010-028]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 in the Consolidated FINRA Rulebook**

July 20, 2010.

On May 21, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "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 adopt NASD Rule 3210 as FINRA Rule 4320 in the consolidated FINRA rulebook. On June 11, 2010, FINRA filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 17, 2010.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

### **I. Description of the Proposed Rule Change**

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>5</sup>

<sup>7</sup> 15 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> Amendment No. 1 was a partial amendment that made minor clarifications, provided additional detail and made technical edits to the purpose section of the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 62288 (Jun. 11, 2010), 75 FR 34496 (Jun. 17, 2010).

<sup>5</sup> FINRA stated that 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"). FINRA also stated that FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their

<sup>3</sup> 15 U.S.C. 78f.

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 19b-4(f)(2).