

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>9</sup> which would make the rule change effective and operative upon filing. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.<sup>10</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Amex to halt trading for individual equity options at the same time that the primary listing market implements the pilot for eligible underlying stocks.<sup>11</sup>

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-2010-55 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2010-55. 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-55 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 2010-14607 Filed 6-16-10; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62288; File No. SR-FINRA-2010-028]**

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of 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**

June 11, 2010.

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> notice is hereby given that on May 21, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a

National Association of Securities Dealers, Inc. ("NASD")) 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. On June 11, 2010, FINRA filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site 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 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"),<sup>4</sup>

<sup>3</sup> Amendment No. 1 was a partial amendment that makes minor clarifications, provides additional detail and makes technical edits to the purpose section of the proposed rule change.

<sup>4</sup> 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).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

<sup>11</sup> For 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>12</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.

FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the Consolidated FINRA Rulebook.

On April 4, 2006, the SEC approved NASD Rule 3210, which applies short sale delivery requirements to those equity securities not otherwise covered by the close-out requirements of Regulation SHO. The Regulation SHO close-out requirements apply only to the equity securities of "reporting" issuers (i.e., issuers that are registered pursuant to Section 12 of the Act<sup>5</sup> or that are required to file reports pursuant to Section 15(d) of the Act<sup>6</sup>).

NASD Rule 3210, among other things, requires participants of registered clearing agencies to take action on failures to deliver that exist for 13 consecutive settlement days in certain non-reporting securities. In addition, if the fail to deliver position is not closed out in the requisite time period, a participant of a registered clearing agency or any broker-dealer for which it clears transactions is prohibited from effecting further short sales in the particular specified security without borrowing, or entering into a bona fide arrangement to borrow, the security until the fail to deliver position is closed out. Pursuant to NASD Rule 3210, FINRA publishes a daily "Threshold Security List."<sup>7</sup> The rule became effective on July 3, 2006. In adopting NASD Rule 3210, FINRA believed that the rule represented an important step in reducing long-term fails to deliver in this sector of the marketplace.

In July 2009, the SEC adopted the substance of temporary Rule 204T<sup>8</sup> under Regulation SHO as a permanent rule, Rule 204 of Regulation SHO.<sup>9</sup> This rule is intended to further the goal of reducing fails to deliver and addressing potentially abusive "naked" short selling in all equity securities by requiring the delivery of securities by settlement date or, in connection with a short sale, the immediate purchase or borrow of such securities to close out the fail to deliver

position by no later than the beginning of regular trading hours on the following settlement day.<sup>10</sup> Notwithstanding the SEC's adoption of this new rule, proposed FINRA Rule 4320 continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities that pre-exist the SEC's implementation of temporary Rule 204T in September 2008.<sup>11</sup>

Therefore, FINRA is proposing to adopt NASD Rule 3210 as FINRA Rule 4320 with minor changes to delete language that provided allowances for "grandfathered" securities during the initial implementation period of NASD Rule 3210 and that, therefore, is no longer relevant. The proposed rule change also clarifies, consistent with Regulation SHO, the borrowing requirements for clearing agency participants, including broker-dealers for which they clear transactions, that sell short non-reporting threshold securities for which a fail to deliver position has not been closed out in the requisite time. Specifically, if a fail to deliver position is not closed out in accordance with Rule 4320(a), the clearing agency participant and any broker-dealer for which it clears, including market makers otherwise entitled to rely on the Rule 203(b)(2)(iii) exception of Regulation SHO, would not be able to short sell the non-reporting threshold security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency. In addition, the rule change makes certain technical amendments to the rule, including changing references to "NASD" to "FINRA."

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no more than 180 days following Commission approval.

<sup>10</sup> Rule 204 of Regulation SHO further provides that fails to deliver resulting from long sales or certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the third settlement day after settlement date (i.e., T+6).

<sup>11</sup> Likewise, the SEC is retaining Rule 203(b)(3) of Regulation SHO in order to cover pre-existing temporary Rule 204T fails in threshold securities as defined in Rule 203(c)(6) of Regulation SHO.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</sup> 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 adopting the proposed rules as part of the Consolidated FINRA Rulebook continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities and will continue to help reduce long-term fails to deliver in this sector of the marketplace.

### 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 35 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 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 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

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>5</sup> 15 U.S.C. 78l.

<sup>6</sup> 15 U.S.C. 78o(d).

<sup>7</sup> For purposes of Rule 3210, a non-reporting threshold security is any equity security that is not a reporting security and, for five consecutive settlement days, has: (1) Aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and (2) a reported last sale during normal market hours (9:30 a.m. to 4 p.m., Eastern Time (ET)) for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more.

<sup>8</sup> See Securities Exchange Act Release No. 58785 (Oct. 14, 2008), 73 FR 61678 (Oct. 17, 2008).

<sup>9</sup> See Securities Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-FINRA-2010-028 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-2010-028. 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 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-2010-028 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62284; File No. SR-NYSE-2010-45]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 80C To Clarify Reopening Procedures**

June 11, 2010.

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 June 10, 2010, 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 Rule 80C to clarify reopening procedures. 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 Exchange proposes to amend Rule 80C to clarify the procedures applicable during a Trading Pause for the reopening of a security on the Exchange following the invocation of a

Trading Pause.<sup>4</sup> Rule 80C was approved by the Commission on June 10, 2010.<sup>5</sup>

Currently, Rule 80C states that indications "shall" be published as close to the beginning of the Trading Pause as possible and should be updated. While the clause "as possible" is intended to provide for those circumstances where it is not feasible to publish an indication prior to a reopening, to avoid confusion, the Exchange believes that section (b)(i) of the Rule should be clarified to state instead that indications may be published to the Consolidated Tape during a Trading Pause.

The rule would be further amended to clarify that Floor Official approval is not required before publishing an indication, an indication does not need to be updated before reopening the security, and the security may reopen outside any prior indication. The Exchange also proposes to add a subsection to Rule 80C(b) to clarify that Floor Official approval under Rule 79A.20 is not required when reopening a security following a Trading Pause.

The Exchange believes that these clarifications are necessary to avoid inconsistent regulatory obligations. Similar in concept to Rule 48, which suspends the requirements for published indications or Floor Official approval during a market-wide volatility condition at the open, Rule 80C would suspend the same requirements on a security-by-security basis because of the volatility that the security is already experiencing. The Exchange notes that notwithstanding whether an indication is published, order imbalance information and indicative price information will be disseminated by the Exchange pursuant to Rule 15(c) as Order Imbalance Information. Additionally, a DMM may publish and update indications and may consult with a Floor Official concerning the reopening process.

The Exchange also proposes to amend Rule 80C to provide that in the event of an early scheduled close, the rule would be in effect until 25 minutes before such scheduled close.

###### **2. Statutory Basis**

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> which requires the rules of an exchange to promote just and equitable principles of trade, to remove

<sup>4</sup> The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex Exchange. See Securities Exchange Act Release No. 62283 (June 11, 2010)(SR-NYSEAmex-2010-56).

<sup>5</sup> See Securities Exchange Act Release No. 62252 (June 10, 2010).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<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.

<sup>13</sup> 17 CFR 200.30-3(a)(12).