

OCC.<sup>5</sup> Second, any fully paid or excess margin securities held by a member to secure a customer's obligations may be posted as margin with OCC to the extent of 140% of the difference between the daily marking price deposits<sup>6</sup> and the original proceeds of the customer's transaction.<sup>7</sup> This proposed rule change permits members to deposit customer fully paid or excess margin securities in these two circumstances as well as in any future circumstances identified by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes that by amending its rules to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3 under the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO, the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>8</sup> which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-OCC-2009-18) be, and hereby is, approved.<sup>11</sup>

<sup>5</sup> New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004) (Interpretation 01 of Securities Exchange Act Rule 15c3-3(c) citing Chicago Board Options Exchange, Inc., SEC No-Action Letter (Feb. 19, 1975)).

<sup>6</sup> As required by OCC of its member.

<sup>7</sup> New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004) (Interpretation 020 of Securities Exchange Act Rule 15c3-3(c)).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61424; File No. SR-NYSE-2010-03]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending the Rule Governing the Issuance of Trading Licenses

January 26, 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 January 13, 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, 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 amend Exchange Rule 300 (Trading Licenses) to provide that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if such member organization is three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license. The Exchange also proposes to amend Rule 309 (Failure to Pay Exchange Fees) to provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary and at the Commission's Public Reference room.

<sup>12</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.

#### 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

Exchange Rule 300 provides that member organizations may buy trading licenses in the annual offering and may buy licenses at any other time in the year, provided that the maximum number of 1366 licenses has not been issued and subject to limitations on the number of licenses a single member organization may hold. Rule 300 provides that member organizations must pay for their trading licenses in 12 monthly installments, with the first installment due prior to the commencement of the applicable year. The Exchange has experienced difficulty in collecting trading license fee installments promptly from a small number of member organizations. Consequently, the Exchange now proposes to amend Rule 300 by adding proposed new subparagraph (h), providing that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if, at the time of such proposed purchase, such member organization remains three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license.

Any trading license purchased by a member organization in the annual auction for the calendar year commencing January 1, 2010, will be subject to automatic revocation at the close of business on March 31, 2010, if the member organization that holds such license remains three months in arrears in making such payments at that time. The Exchange believes that this transitional approach for 2010 is appropriate as it will enable it to give the affected member organizations adequate notice and a reasonable period in which to pay their overdue trading

license fee installments to avoid losing their floor trading privileges. Upon approval of this filing, the Exchange intends to distribute an Information Memorandum to its member organizations to inform them of the rule change.<sup>4</sup> Member organizations receive monthly trading license bills, which reflect unpaid balances from previous periods, so member organizations that are three months in arrears are aware of that fact.

The acceptability proceedings requirements of Rule 308 will not be applicable to any denial or revocation of a trading license under proposed Rule 300(h). Instead, Rule 300(h) will include its own appeal procedure. One calendar month prior to the effective date of any potential denial of renewal or revocation of a trading license (the "Expiration Date") pursuant to Rule 300(h), the Exchange will notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice referenced in the immediately preceding sentence must include a description of the appeal process described below. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice to the officer of the Exchange identified for that purpose in such notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. The Exchange must provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license.<sup>5</sup> This written determination shall be final and conclusive action by the Exchange. If

the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. A written record shall be kept of any proceedings under Rule 300(h). As the appeal procedures under proposed Rule 300(h) will not include any provision for an oral hearing, the Exchange expects that the written record will generally consist of (i) the written appeal and supporting documents (if any) submitted by the member organization and (ii) the Exchange's written determination.

Rule 309 ("Failure to Pay Exchange Fees") will not apply to the nonpayment of trading license fee installments, which will be dealt with solely under proposed Rule 300(h). The adoption of proposed Rule 300(h) will not in any way limit the application of Rule 309 in the event of the nonpayment by a member organization of any fee other than a trading license fee or any other sum due to the Exchange. The Exchange also proposes to amend Rule 309 to explicitly provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

The Exchange notes that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. If some member organizations consistently fail to pay their trading license fee bills, the Exchange will be forced to impose higher fees on those member organizations which do pay their bills. The Exchange believes that the proposed rule change will cause member organizations to pay their bills more promptly and thereby enable the Exchange to avoid imposing the cost of the nonpayment by a small number of member organizations on the majority of other member organizations that routinely pay on time. It is neither the intention nor the expectation of the Exchange that a significant number of member organizations will lose their ability to conduct a trading floor business as a result of this amendment. Rather, the Exchange believes that most member organizations that are late in paying their bills will respond to the possibility of losing their access to the floor by paying off their outstanding balances. The Exchange notes that any member organization which forfeits its trading licenses as of March 31, 2010 will only owe the pro rata license fee for 2010 through that date. In addition, any member organization which forfeits its trading licenses in 2010 or is ineligible to purchase trading licenses thereafter may purchase trading licenses (to the extent there are available unsold

licenses) at such time as it is no longer three months in arrears in its payments.

## 2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)<sup>6</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, listed companies and other persons using its facilities and the requirement under Section 6(b)(5)<sup>7</sup> that an exchange have rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment provides for an equitable allocation of fees among member organizations, as it will deprive member organizations of floor access only if they do not pay the trading license fees applicable to all member organizations with a trading floor business.

### *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

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 the 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

<sup>4</sup> The first such notice will be sent to member organizations that are two months or more in arrears as of the end of February 2010. This notice will state that the revocation of any trading licenses pursuant to proposed Rule 300(h) on April 1, 2010, will be contingent upon SEC approval of SR-NYSE-2010-03 prior to that date. See email from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext LLC, to David Liu, Assistant Director, and Leigh W. Duffy, Attorney-Adviser, Commission, dated January 25, 2010.

<sup>5</sup> If the Exchange denies a member organization's appeal under Rule 300(h), the Exchange will notify the Commission in the manner required by Exchange Act Rule 19d-1.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 No. SR-NYSE-2010-03 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 No. SR-NYSE-2010-03. 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>8</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 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 NYSE. 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-2010-03 and should be submitted on or before February 23, 2010.

<sup>8</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-2010-0025]

#### Approved Information Collection Extension Request; Disadvantaged Business Enterprise

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension for a currently approved information collection.

**DATES:** Comments on this notice must be received by April 5, 2010.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001;
- *Hand delivery:* West Building Ground Floor, Room W-12-140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. Ashby, Office of the Secretary, Office of Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366-9310 (voice), 202-366-9313 (fax) or at [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Report of DBE Awards and Commitments.

*OMB Control Number:* 2105-0510.

*Type of Request:* Extension to a currently approved information collection.

*Abstract:* 49 CFR Part 26 establishes requirements for the Department of

Transportation (DOT) so as to comply with the mandate by statute including 1101 (b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Public Law 109-59 and 49 U.S.C. 47113, Public Law 105-178. The key part of the collection is a requirement that state and local governments subject to the DBE program report to the Secretary of Transportation on DBE participation, as well as maintain a directory of DBE firms and report to the Secretary concerning the composition of the directory. If these reporting requirements were not available, firms controlled by minorities would not achieve the appropriate participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount of contracting dollars to DBEs.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The information request consists of 17 data items on one page and one attachment, to be completed on a semi-annual basis (for FHWA and FTA programs) or an annual basis (for FAA programs).

*Respondents:* DOT financially-assisted state and local transportation agencies.

*Estimated Number of Respondents:* 1,057.

*Estimated Total Burden on Respondents:* 1,311,000.

The information collection is available for inspection in [regulations.gov](http://www.regulations.gov), as noted in the **ADDRESSES** section of this document.

*Comments are Invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

<sup>9</sup> 17 CFR 200.30-3(a)(12).