

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60697; File No. SR–FINRA–2009–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt FINRA Rule 2264 (Margin Disclosure Statement) in the Consolidated FINRA Rulebook

September 21, 2009.

On July 29, 2009, 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”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder² to adopt NASD Rule 2341 (Margin Disclosure Statement) with minor changes as FINRA Rule 2264 as part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”).³ Notice of the proposal was published for comment in the **Federal Register** on August 11, 2009.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

FINRA Rule 2264 requires members that open margin accounts for or on behalf of non-institutional customers⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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).

⁴ Exchange Act Release No. 60437 (Aug. 5, 2009), 74 FR 40256 (Aug. 11, 2009).

⁵ For purposes of the rule, a non-institutional customer means a customer that does not qualify as an “institutional account” under NASD Rule 3110(c)(4). NASD rule 3110(c)(4) provides, “the term ‘institutional account’ shall mean the account of: (A) A bank, savings and loan association, insurance company, or registered investment company; (B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.”

to deliver to such customers, prior to or at the time of opening the account, a specified margin disclosure statement to highlight the risks involved in trading securities in a margin account. Members also must provide the margin disclosure statement (or an abbreviated version as provided by the rule) to non-institutional margin account customers not less than once a calendar year. The rule provides members with the flexibility to use an alternative disclosure statement to the language specified in the rule provided that the alternative disclosures are substantially similar to the disclosures specified in the rule. Members must deliver the initial and annual disclosure statement, in writing or electronically, to customers covered by the rule on an individual basis. In addition, the rule requires members that permit non-institutional customers to open accounts online, or engage in transactions in securities online, to post the margin disclosure statement on their Web sites in a clear and conspicuous manner.

FINRA stated that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

II. Discussion and Commission’s Findings

After careful review, 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 national securities association.⁶ In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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. These margin disclosures are important because they provide investors with information with which they can better understand the operation of margin accounts and the risks associated with margin trading.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). See *Regulatory Notice* 08–25 (May 2008).

⁶ In approving this rule proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(6).

proposed rule change (SR–FINRA–2009–052) be, and hereby is, approved. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60686; File No. SR–BX–2009–041]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Eliminate Chapter V, Section 13 (Unusual Market Conditions) of the BOX Trading Rules and To Modify Related Rules

September 18, 2009.

On August 3, 2009, NASDAQ OMX BX, Inc. (the “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate Chapter V, Section 13 (Unusual Market Conditions) of the Trading Rules of the Boston Options Exchange Group, LLC (“BOX”) and to modify related rules. The proposed rule change was published for comment in the **Federal Register** on August 18, 2009.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The proposed rule eliminates Chapter V, Section 13, as well as certain ancillary rules, which deal with fast markets.⁴ Chapter V, Section 13 provides for an Options Official to determine that the level of trading activity or the existence of unusual

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60465 (August 10, 2009), 74 FR 41765 (“Notice”).

⁴ In addition to removing Chapter V, Section 13, the proposed rule change also removes certain rules related to fast markets. Specifically, the Exchange proposes to modify Chapter VI, Section 6(a) to remove a fast market rule exception to the general rule that all Market Maker bids or offers must be of a size of at least ten (10) contracts. The Exchange also proposes to: (1) Remove Section 6(c)(ii)(2) of Chapter VI to reflect the previously described removal of Chapter V, Section 13; (2) replace references to Rule 11Ac1-1 with Rule 602 of Regulation NMS under the Exchange Act; and (3) modify Section 9(b) (Trading Sessions) of Chapter XIV (Index Rules) by eliminating the declaration of a fast market as a factor in determining whether to delay the opening of the index options market.

market conditions is such that BOX is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on BOX. If an Options Official determined the market in the option to be "fast," the Official could take various steps including suspending minimum size requirements for quotations, turning off the Price Improvement Period ("PIP") process, or taking other actions in order to promote a fair and orderly market. BOX represents that a fast market is characterized by heavy trading and high price volatility in which orders may be submitted to market makers at such a rapid pace that a backlog of orders builds, causing delays in execution. If such a fast market occurred, delays could in turn cause significant price differentials between the quoted price and executed price.

BOX notes in its filing that in an electronic market such as BOX, during trading hours, orders generally are matched automatically with quotes on the other side of the market according to time priority, and executed immediately.⁵ BOX states that any backlog in processing orders would be a result of a systems malfunction rather than from fast market conditions, and should any such backlog occur, the Exchange would halt trading on BOX until the issue could be resolved.⁶

After careful review, 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 national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

⁵ See BOX Trading Rules, Chapter V, Section 16. BOX further states that because there is no trading floor and all orders are received and managed electronically, orders on BOX are executed with matching contra orders within a fraction of a second after the matching quote is received, subject to certain exceptions written into the BOX Trading Rules, such as Directed Orders (Chapter VI, Section 5(b)-(c)), and other exposure periods. See generally Chapter V, Section 16 (Execution and Price/Time Priority).

⁶ See BOX Trading Rules, Chapter V, Section 10(a).

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, 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 Exchange stated in its filing that it has never declared a fast market and that any backlog of orders would be the result of a system malfunction. The Commission notes that if there were a backlog of orders, the Exchange would halt trading until such issue could be resolved pursuant to Chapter V, Section 10(a) of the BOX Trading Rules. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-BX-2009-041) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60683; File No. SR-BATS-2009-029]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

September 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 8, 2009, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 modify its fee schedule applicable to Members⁵ of the Exchange pursuant to BATS Rules 15.1(a) and (c). The changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, 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 Exchange 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective September 8, 2009, in order to remove references to "BOLT" processing on such fee schedule due to the removal from functionalities offered by the Exchange of: (1) an order type (a "BATS Only BOLT Order") and (2) a pre-routing processing method ("BOLT Routing"). Such features were discontinued by the Exchange effective September 1, 2009, and thus, the Exchange wishes to remove the references effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.