protection of investors and the public interest because such waiver will allow BATS Users to immediately benefit from the protections provided by BATS market orders. The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[14]

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.

ii. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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.* Please include File No. SR–BATS–2009–001 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–BATS–2009–001. 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 changes 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 BATS. 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–BATS–2009–001 and should be submitted on or before February 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1670 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59265; File No. SR–BSE–2008–36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Delisting Standards

January 16, 2009.

I. Introduction

On November 3, 2008, the Boston Stock Exchange, Inc. (''BSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 adopt new criteria permitting the delisting of a security when the Exchange has terminated its program for listing and trading cash equities (''Listing Program'') in connection with the discontinuation of trading in all securities listed on its market. The proposed rule change was published for comment in the **Federal Register** on November 28, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

On September 5, 2007, the Exchange announced the discontinuation of the operations of the Boston Equities Exchange. In addition to that announcement, in October 2007, all issuers were given additional notice that the BSE had terminated its Listing Program. While trading in all securities on the BSE ceased on September 5, 2007, not all companies have delisted their securities from the Exchange by filing a Form 25 with the Commission.[4] As a result, the Exchange proposes to adopt new rules that would give it the authority to delist, under certain conditions, the remaining BSE-listed companies, because there is no basis to involuntarily delist these companies under BSE's existing rules.

Under the proposal, the Exchange may determine to delist a security when the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market. The proposed new rule will provide that at least 15 days before issuing such delisting determination, the Board of Directors or its designee must give notice of the delisting to the company. As soon as practicable after the issuance of the delisting determination, notice will be provided to the company and the Commission of such delisting determination. Notice to the company of the delisting determination shall inform the company of the opportunity to appeal, applying the same appeal rights that exist under BSE rules for any company involuntarily delisted by the Exchange when the BSE was operational.[5]

The Exchange represents that it would use this authority to delist on the grounds that BSE is not currently operating a listing program and, therefore, it is in the public interest that the Exchange not maintain any appearance of having any listings on the Exchange as long as programs for listing and trading cash equities and related activity have ceased. In addition, prior to implementing any involuntary delistings, the Exchange represented that it will contact each company and suggest that it file a Form 25 to effect a voluntary delisting before the Exchange issues any delisting determination. Thereafter, the Exchange will move to delist those companies that do not act

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58990 (November 20, 2008), 73 FR 72534 (''Notice''). In order for a company to voluntarily delist from the Exchange, it would have to follow the procedures set forth in Rule 12d2–2 under the Act, which includes the filing of a Form 25 with the Commission. *See* Rule 12d2–2 under the Act, 17 CFR 240.12d2–2.

[4] As of the date of the Notice, twenty-nine issuers currently have listings with the Exchange.

[5] *See infra* note 6.

in accordance with that suggestion. Companies that are involuntarily delisted under the rule being adopted in this filing will have the appeal right provided for by new Section 2(c)(3) of Chapter XXVII of the Rules of the Exchange.[6]

In its filing, BSE noted that the NASDAQ OMX Group, Inc. (''NASDAQ OMX'') has acquired the Exchange. According to BSE, NASDAQ OMX expects that the Exchange will resume a program for listing and trading cash equities. Accordingly, the Exchange believes it is appropriate to leave all of its listing rules, as amended, in place pending rule changes to its listing rules.[7] Upon the resumption of a listing business by the Exchange, delisted companies may be eligible for relisting if their securities meet the applicable standards of the Exchange.[8]

III. Discussion and Commission Findings

After careful consideration, 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[9] and, in particular, the requirements of Section 6 of the Act.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[12] which requires, among other things, that the rules of the exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

The BSE proposes to adopt new criteria permitting the delisting of securities that are no longer being traded in connection with the discontinuation of trading in all securities listed on its market. The Commission notes that the new delisting standard can only be utilized in rare and unusual circumstances and emphasizes that it can only be used to involuntarily delist companies when the Exchange has discontinued trading in all listed securities in its marketplace, as BSE has done. Specifically, the Exchange announced in September 2007 that it was terminating its Listings Program, and in October 2007, all issuers were given additional notice that the Listings Program had ceased. However, not all issuers have voluntarily delisted their securities in accordance with the requirements in Rule 12d2–2 under the Act[13] and BSE rules. The proposed rule change should also make the delisting process more efficient for both the Exchange and listed companies in light of the cessation of trading on the BSE market. The new delisting standard should provide the Exchange with an additional means of ensuring the quality of and public confidence in BSE as a national securities exchange during its reorganization.

The proposed rule change further serves to protect the public from being mislead into believing that these securities retain the imprimatur of an exchange listing on an active trading market. In this regard, the Commission notes that companies listed on a national securities exchange retain certain benefits and privileges. If an exchange has ceased all trading in all securities due to discontinuation of its marketplace, companies generally should not be able to retain their exchange listing and corresponding privileges, as they are no longer providing liquidity via the market. Moreover, these companies would no longer be monitored for compliance with maintenance listing criteria, and thus investors and the public would not have necessary information regarding these companies' viability. The Commission thus believes that the proposed new delisting standard is consistent with the protection of investors under Section 6(b)(5) of the Act.[14]

The Commission also believes the proposal provides sufficient notice to companies facing delisting pursuant to the new criteria consistent with the Act. First, notice will be given to the company at least 15 days before the Exchange issues its delisting determination. The Commission believes that the proposed rule affords sufficient time for interested parties to submit to the Exchange and/or Commission any comments they have on the anticipated delisting, or to take any other action as permitted under state and federal law including commencing a voluntary delisting in accordance with Rule 12d2–2 under the Act.[15]

Second, notice will be given to the company (and the Commission) after the issuance of the delisting determination, and the notice shall inform the company of the opportunity to appeal. The appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII, which are identical to the appeals procedures currently set forth in Section 2(b)(2) of Chapter XXVII, provide for notice to the issuer of the Exchange's decision to delist its securities; an opportunity for appeal to the Exchange's board of directors, or to a designee of the board, with a $3000 fee; and public notice, no fewer than 10 days before the delisting becomes effective, of the Exchange's final determination to delist the security. The Commission believes that the proposed rule requiring notice to the issuer of the Exchange's delisting decision and establishing appeal procedures provides issuers with adequate notice and opportunity to appeal the delisting as required by Rule 12d2–2 under the Act.[16] The Commission notes that the appeal procedures being adopted by the Exchange set forth an adequate structure to meet the requirements of Section 6(b)(7) of the Act[17] and for BSE to review on appeal any involuntary delistings commenced under the new rule being adopted herein.[18]

[6] The Commission notes that the appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII are identical to the appeals procedures set forth in the current BSE Rules. *See* Chapter XXVII, Section 2(b)(2) of the BSE Rules.

[7] Any future proposal to resume trading on a BSE market and amend listing standards would be required to be submitted as a proposed rule change to the Commission under Section 19(b) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b), 17 CFR 240.19b–4.

[8] Any company that seeks listing on the Exchange would be required to apply and meet the Exchange's initial listing standards. Delisted companies may also apply to list on another national securities exchange if they meet that exchange's initial listing standards.

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

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(7).

[13] 17 CFR 240.12d2–2.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 240.12d2–2.

[16] 17 CFR 240.12d2–2.

[17] 15 U.S.C. 78f(b)(7).

[18] The Commission has made similar findings in approving the original delisting appeal procedures of the BSE. *See* Securities Exchange Act Release No.

Continued

Finally, the proposed rule change requires that public notice of the final delisting determination by the Exchange be provided no fewer than 10 days before the delisting becomes effective, in accordance with Rule 12d2–2 under the Act.[19] The Commission believes that public notice of the Exchange's final determination should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[20]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSE–2008–36) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1673 Filed 1–26–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59253; File No. SR–FINRA–2008–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) in the Consolidated FINRA Rulebook

January 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 29, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. [''NASD'']) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared by FINRA. The Commission is publishing this notice to solicit comments from interested persons.

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

FINRA is proposing to adopt without material change NASD Interpretive Material 2110–7 (IM–2110–7) (''Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes'') as a FINRA rule in the consolidated FINRA rulebook. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the consolidated FINRA rulebook.

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 these 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 the new consolidated rulebook (''Consolidated FINRA Rulebook''),[2] FINRA is proposing to adopt without material change NASD Interpretive Material 2110–7 (IM–2110–7) (''Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes'') as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

(A) Background

NASD IM–2110–7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member[3] to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery, or acceptance of a written request from a customer to transfer his or her account.[4]

FINRA adopted IM–2110–7 to address the practice of delaying customer account transfers.[5] In adopting IM–2110–7, FINRA noted that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm or by soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that in a prior *Notice to Members* it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade.[6] FINRA stated that

53700 (April 21, 2006), 71 FR 25257 (April 28, 2006) (SR–BSE–2005–46).

[19] 17 CFR 240.12d2–2.

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[3] The term ''person associated with a member'' includes, among others, registered representatives. *See* FINRA By-Laws, Article I, Paragraph (rr).

[4] IM–2110–7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. (FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870, Incorporated NYSE Rule 412 and its Interpretation. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) [File No. SR–FINRA–2008–036].

[5] *See* NASD *Notice to Members* 02–07 (January 2002) (Interfering With Customer Account Transfers); *see also* Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) [File No. SR–NASD–2001–95].

[6] NASD *Notice to Members* 79–7 (February 1979) (Fair Treatment of Customer Accounts); *see also* Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).