

of a broker-dealer will convert or misuse customer funds or securities and to assure that the price of the security the customer purchases has not moved substantially from the date the customer decided to purchase that security.

In the Approval Order for Rule 2821 we stated,

[Proposed Rule 2821] is designed to curb sales practice abuses in deferred variable annuities. Its recommendation requirements provide a specific framework for a broker-dealer's suitability analysis of these securities. By setting forth factors that a broker-dealer must specifically consider in recommending deferred variable annuities and requiring the registered representative to obtain certain information from his or her customers, the proposed rule should improve communications between registered representatives and customers regarding these securities. The supervisory review component should foster a thorough analytical review of every deferred variable annuity transaction in a timeframe that will limit the possibility of unsuitable recommendations and transactions. The proposed rule as a whole is geared to protecting investors by requiring firms to implement more robust compliance cultures, and to give clear consideration of the suitability of these complex products.

Further, we found that Rule 2821 is 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. Consequently, we approved NASD's proposed Rule 2821.

As we believe the NASD's Rule 2821 to be in the public interest but a broker-dealer would be burdened with additional requirements under Exchange Act Rules 15c3-1 and 15c3-3 were it to comply with Rule 2821, we must balance the investor protections provided by Rules 15c3-1 and 15c3-3 with those provided by Rule 2821. For this reason, we have specifically tailored the above-described exemption.

First, the exemption is specifically limited to situations where a broker-dealer has failed to promptly transmit "a check made payable to an insurance company for the purchase of a deferred variable annuity product," and "the transaction is subject to the principal review requirements of NASD Rule 2821 and a registered principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with that rule." In all other situations where a check is received by a broker-dealer and is not promptly forwarded, the full provisions of both Rule 15c3-1 and 15c3-3 still apply.

Second, the exemption requires a broker-dealer to promptly transmit such

checks no later than noon of the business day following the date a registered principal reviews and determines whether he or she approves of the purchase or exchange of the deferred variable annuity. This is designed to assure that the broker-dealer holds the customer's check no longer than is necessary to comply with Rule 2821.

Third, a broker-dealer must maintain a copy of each such check and create a record of the date the check was received from the customer and the date the check was transmitted to the insurance company if approved, or returned to the customer if rejected. This requirement will allow the broker-dealer's compliance and internal audit departments, as well as Commission, self-regulatory organization, and other examiners to verify that a broker-dealer is complying with the provisions of this exemption.

For the foregoing reasons, the Commission finds that granting the above-described exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

III. Conclusion

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act⁷ that, a broker-dealer shall be exempt from any additional requirements of Rules 15c3-1 or 15c3-3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity product by noon of the business day following the date the broker-dealer receives the check from the customer, provided:

(i) The transaction is subject to the principal review requirements of NASD Rule 2821 and a registered principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with that rule;

(ii) the broker-dealer promptly transmits the check no later than noon of the business day following the date a registered principal reviews and determines whether he or she approves of the purchase or exchange of the deferred variable annuity; and

⁷ Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(iii) the broker-dealer maintains a copy of each such check and creates a record of the date the check was received from the customer and the date the check was transmitted to the insurance company if approved, or returned to the customer if rejected.

By the Commission.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56371; File No. SR-BSE-2007-43]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Exchange Fees and Charges

September 7, 2007.

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 August 31, 2007, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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 substantially prepared by the BSE. On September 6, 2007, the BSE submitted Amendment No. 1 to the proposed rule change. The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The BSE proposes to amend the Boston Options Exchange ("BOX") Fee Schedule in order to revise certain transaction fees for issues that trade as part of the Penny Pilot Program.⁵

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).

⁵ See Securities Exchange Act Release No. 55155 (January 23, 2007) 72 FR 4741 (February 1, 2007)

Continued

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 BSE 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 BSE 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 purpose of the proposed rule change is to revise the existing BOX Fee Schedule in conjunction with the Penny Pilot Program. The Exchange plans to introduce the Make or Take pricing structure for all classes contained in the Penny Pilot Program.⁶ The Exchange is proposing to amend the BOX Fee Schedule in order to make the following changes to certain fees and charges that are assessed to Participants in the issues referenced below, effective as of the first trading day of September 2007.⁷

Transaction Fees for Classes Contained in the Penny Pilot

The Exchange is proposing to implement a Liquidity Make or Take pricing structure for executed transactions in issues participating in the Penny Pilot Program. Under the proposed Fee Schedule change, orders that add or "make" liquidity to the BOX Book will receive a transaction credit upon execution. BOX Market Makers will receive a credit of \$0.30 per contract. All other Participants will receive a credit of \$0.25 per contract. Any order, including an order with a Fill and Kill designation, which executes against an order which is being exposed before being placed on the BOX Book, will be deemed to be making

liquidity and will receive a transaction credit upon execution.

The Transaction Fee for all Participants that "take" liquidity from the BOX Book will be \$0.45 per contract. This fee will be applied to all Participants, including Market Makers, Broker-Dealers and Executing Participants executing orders on behalf of Public Customers. Any order, including an order with a Fill and Kill designation, which takes liquidity by trading immediately upon entry to the BOX Book or following its exposure as part of NBBO filtering will be assessed the \$0.45 per contract fee.

Linkage Fees

Linkage Orders executed at BOX are subject to the same billing treatment as other Broker-Dealer orders. Since Linkage Orders that are sent to and executed on BOX will be taking liquidity, these orders will be assessed a \$0.45 per contract fee. Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in the BOX Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.

MAC and Mini MAC Exemption

No MAC or MiniMAC fees will be charged for classes contained in the Liquidity Make or Take pricing structure. In addition, the trades in these classes will not count toward the calculation of Average Daily Volume rebates for BOX Market Makers.

Transactions Exempted From the Liquidity Make or Take Model

The following transactions will be exempt from the Liquidity Make or Take pricing structure as they are deemed to neither take nor make liquidity: Transactions which occur on the opening or re-opening of trading and transactions on both sides of a PIP, with the exception of unrelated orders that interact with an Improvement Auction, which will be charged a "take" fee. Transactions which are exempt from the Liquidity Make or Take pricing structure will be subject to standard transaction fees as stated in the Fee Schedule.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it is designed to provide for the equitable allocation of

dues, fees and other charges among its members and issuers 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 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

The Exchange has neither solicited nor received comments on 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 pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder because it establishes or changes a due, fee or other charge imposed by the Exchange. 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 the furtherance of the purposes of the Act.¹²

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. Please include File Number SR-BSE-2007-43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

(SR-BSE-2006-49) ("Original Penny Pilot Program Approval Order"). See also Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR-BSE-2007-38).

⁶ The Original Penny Pilot Program Approval Order, *supra* note 5, lists the initial thirteen options classes currently participating in the Penny Pilot Program. If the Penny Pilot Program is expanded to introduce more participating options classes, the Make or Take Pricing model will also apply to those options classes. Furthermore, if the Penny Pilot Program is extended, the Make or Take Pricing model will also be extended accordingly.

⁷ Participating classes are listed in Section 33 to Chapter V of the BOX Rules.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 6, 2007, the date on which the BSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-43. 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 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 the BSE. 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-BSE-2007-43 and should be submitted on or before October 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-18076 Filed 9-12-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56375; File No. SR-NASD-2004-183]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Amendment Nos. 3 and 4 and Order Granting Accelerated Approval of the Proposed Rule, as Amended, Related to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

September 7, 2007.

I. Introduction

On December 14, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934¹ ("Exchange Act" or "Act") and Rule 19b-4² thereunder, proposed new Rule 2821 ("Proposed Rule 2821") relating to the sales practice standards and supervisory and training requirements applicable to transactions in deferred variable annuities.³ Proposed Rule 2821, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 21, 2005.⁴ The Commission received approximately 1500 comments on the proposal.⁵ NASD filed Amendment No. 2 on May 4, 2006, which addressed the comments and proposed responsive amendments. Amendment No. 2 was published for comment in the **Federal Register** on June 28, 2006.⁶ The Commission received approximately 1950 comments

on Amendment No. 2.⁷ To further explain and modify certain provisions of Proposed Rule 2821 in response to comments, NASD filed Amendment No. 3 on November 15, 2006 and Amendment No. 4 on March 5, 2007. Amendment No. 4 supersedes all of the previous amendments in their entirety. All of the comments that the Commission has received are available on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). This order provides notice of Amendment Nos. 3 and 4 to the proposed rule and approves the proposed rule as amended on an accelerated basis.⁸

II. Description of the Proposal

Proposed Rule 2821 would create recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. It is intended to supplement, not replace, NASD's other rules relating to suitability, supervisory review, supervisory procedures, and training. Thus, to the extent Proposed Rule 2821 does not apply to a particular transaction, NASD's general rules on suitability, supervisory review, supervisory procedures, and training continue to govern when applicable.⁹ The text of the proposed rule is available on FINRA's Web site (<http://www.finra.org>), at FINRA's principal office, and at the Commission's Public Reference Room.

Proposed Rule 2821 would apply to the purchase or exchange of a deferred variable annuity and to an investor's initial subaccount allocations.¹⁰ It

⁷ Approximately 1700 of these comments, primarily from licensed insurance professionals and variable product salespersons, are virtually identical. These letters are referred to herein as "Letter Type B."

⁸ NASD granted consent for the Commission to approve the proposed rule beyond the timeframes set forth in section 19(b)(2) of the Act.

⁹ The general suitability obligation requires a broker-dealer to consider its customer's ability to understand the security being recommended, including changes in the customer's ability to understand, monitor, and make further decisions regarding securities over time.

¹⁰ As NASD noted in Amendment No. 2, the proposed rule focuses on customer purchases and exchanges of deferred variable annuities, areas that, to date, have given rise to many of the sales practice abuses associated with variable annuity products. See Exchange Act Release No. 52046A, at 3-5 (discussing various questionable sales practices that NASD examinations and investigations have uncovered and the actions NASD has taken to address those practices). The proposed rule would thus cover a standalone purchase of a deferred variable annuity and an exchange of one deferred variable annuity for another deferred variable

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

⁴ See Exchange Act Release No. 52046A (July 19, 2005); 70 FR 42126 (July 21, 2005) (SR-NASD-2004-183).

⁵ Approximately 1300 of these comments, primarily from licensed insurance professionals and variable product salespersons, are virtually identical. These letters are referred to herein, and on the list of comments on the Commission's Web site as "Letter Type A." The Commission also received multiple copies of other letters, which we refer to as Letters Type B, C, D, E, F, G and H, below.

⁶ See Exchange Act Release No. 54023 (June 21, 2006); 71 FR 36840 (June 28, 2006) (SR-NASD-2004-183).

¹³ 17 CFR 200.30-3(a)(12).