

exchange.<sup>6</sup> In particular, it is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,<sup>9</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>10</sup> adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>11</sup>

This proposal would make permanent the NYSE Arca Realtime Reference Prices service and make permanent the \$30,000 flat monthly fee for that service.<sup>12</sup> The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.<sup>13</sup> There are a variety of alternative sources

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 17 CFR 242.603(a).

<sup>11</sup> NYSE Arca is an exclusive processor of the NYSE Arca Realtime Reference Prices service under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

<sup>12</sup> See *supra* note 4.

<sup>13</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

of information that impose significant competitive pressures on NYSE Arca in setting the terms for distributing the NYSE Arca Realtime Reference Prices service. The Commission believes that the availability of those alternatives, as well as NYSE Arca's compelling need to attract order flow, imposed significant competitive pressure on NYSE Arca to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE Arca was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSEArca-2009-32), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59987; File No. SR-FINRA-2009-016]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Amended, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

May 27, 2009.

#### I. Introduction

On March 25, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD"))

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed Rule Change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 15, 2009.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as amended.

#### II. Description of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2130 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository system.

FINRA is proposing to adopt NASD Rule 2810 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate investment trusts.

FINRA is proposing to adopt NASD Rule 3115 without material change in the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing.

<sup>4</sup> See Securities Exchange Act Release No. 59771 (April 15, 2009), 74 FR 18411.

systems (“ATs”) <sup>5</sup> that accept orders for security futures <sup>6</sup> to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule provides FINRA with an audit trail of orders for security futures placed on an ATS.

FINRA is proposing to adopt NASD Rule 2342 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office (“GAO”), entitled “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors.” <sup>7</sup>

### III. Discussion and 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. <sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, <sup>9</sup> which requires, among other things, that FINRA rules 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.

The Commission believes that that transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD continue to be reasonably designed to ensure that information submitted to

<sup>5</sup> ATs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

<sup>6</sup> A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as “securities” under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

<sup>7</sup> See U.S. Government Accountability Office, “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,” Publication GAO-01-653 (May 25, 2001).

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

and maintained in the CRD is accurate and complete. The Commission believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding FINRA’s members’ participation in public offerings of Investment Programs continue to meet statutory mandates. The Commission believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATs. Finally, the Commission believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, <sup>10</sup> that the proposed rule change (SR-FINRA-2009-016), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. <sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59999; File No. SR-BX-2009-026]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing

May 28, 2009.

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, 2009, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared

by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act, <sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 is proposing to modify the terms and conditions under which the Exchange is affiliated with NASDAQ Options Services, LLC (“NOS”). The Exchange proposes to implement the proposed rule change when NASDAQ OMX PHLX, Inc. (“PHLX”) implements its XL II trading system. <sup>4</sup> There is no proposed rule language.

#### 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 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 NASDAQ OMX Group, Inc. (“NASDAQ OMX”) acquired the Exchange in August 2008. Prior to the acquisition, the Exchange owned a 21.87% interest in Boston Options Exchange Group, LLC (“BOX LLC”), the operator of the Boston Options Exchange facility (“BOX”). BOXR is a wholly-owned subsidiary of the Exchange, to which the Exchange has delegated, pursuant to a delegation plan, certain self-regulatory responsibilities related to the BOX.

At the closing of the acquisition by NASDAQ OMX, the Exchange transferred its interest in BOX LLC to

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1).

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

<sup>11</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.