

provisions of the Securities Act.<sup>28</sup> For example, in a global offering, some debt securities may be issued as part of a foreign tranche pursuant to Regulation S.<sup>29</sup> Under the proposed amendment, U.S. resales of securities from that tranche effected as Rule 144A<sup>30</sup> transactions would be required to be reported to TRACE. The proposed amendment regarding Rule 144A<sup>31</sup> transactions will allow FINRA to obtain a more complete audit trail of Rule 144A<sup>32</sup> transactions in corporate bonds. This additional transaction data will enhance the regulatory surveillance of the corporate bond market as a whole.<sup>33</sup>

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>34</sup> 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. FINRA believes that the proposed rule change will provide FINRA with heightened capabilities to regulate and conduct surveillance in the corporate debt securities markets, enhance market transparency and protect investors and other market participants by including in TRACE certain corporate debt securities that currently are traded in the same markets in which TRACE-eligible securities are traded by the same market participants and investors.

## B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would impose any burden on competition that is not

necessary or appropriate in furtherance of purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## 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 such 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 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 Number SR-FINRA-2009-004 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 Number SR-FINRA-2009-004. 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 FINRA. 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-FINRA-2009-004 and should be submitted on or before April 1, 2009.<sup>35</sup>

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-5203 Filed 3-10-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59495; File No. SR-FINRA-2008-052]

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a 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

March 3, 2009.

## I. Introduction

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") proposed rule change SR-FINRA-2008-052 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 27, 2009.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is

<sup>28</sup> 15 U.S.C. 77a et seq.

<sup>29</sup> 17 CFR 230.901-905.

<sup>30</sup> 17 CFR 230.144A.

<sup>31</sup> 17 CFR 230.144A.

<sup>32</sup> 17 CFR 230.144A.

<sup>33</sup> Currently, as provided in Rule 6750, FINRA does not disseminate Securities Act Rule 144A transactions, and FINRA does not propose to amend Rule 6750. See e-mail from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated March 4, 2009.

<sup>34</sup> 15 U.S.C. 78o-3(b)(6).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 59253 (January 15, 2009), 74 FR 4792.

granting approval of the proposed rule change.

## II. Description

The proposed rule change adopts 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.

### (1) Purpose

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> FINRA is proposing to adopt without material change NASD IM-2110-7 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<sup>4</sup> 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.<sup>5</sup>

<sup>3</sup> The current Consolidated FINRA Rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (until the completion of the rulebook consolidation process, the FINRA rulebook includes NASD Rules and Incorporated NYSE Rules, together referred to as the "Transitional Rulebook"), in addition to the new consolidated FINRA Rules). 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).

<sup>4</sup> The term "person associated with a member" includes, among others, registered representatives. See FINRA By-Laws, Article I, Paragraph (rr).

<sup>5</sup> 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

FINRA adopted IM-2110-7 to address the practice of delaying customer account transfers.<sup>6</sup> In adopting IM-2110-7, FINRA noted in a Notice to Members 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.<sup>7</sup> FINRA stated that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the prior Notice had warned about.

In adopting IM-2110-7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. Rather, IM-2110-7 is limited to restricting a member from interfering with a customer's right to transfer his or her account once the customer has asked the firm to move the account.

### (B) Proposal

FINRA believes that NASD IM-2110-7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer

NASD IM-2110-7 with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM-2110-7 would be recodified with conforming revisions as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).<sup>8</sup>

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than ninety days following Commission approval.

## III. Discussion

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. 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 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. The proposed rule change is an interpretation to an existing rule of NASD that is being adopted without material change to the FINRA rulebook. The proposed rule change should continue to protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes between registered representatives and their former firms. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A(b)(6) of the Act and the rules and regulations thereunder.<sup>10</sup>

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) [File No. SR-FINRA-2008-036].

<sup>6</sup> 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].

<sup>7</sup> 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).

<sup>8</sup> The exact revised text of IM-2100-8 is attached as Exhibit 5 to the proposed rule change and is available at <http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330>. Similarly, FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2110. Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) [File No. SR-FINRA-2008-028].

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

<sup>10</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).

FINRA–2008–052) 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.

[FR Doc. E9–5212 Filed 3–10–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59497; File No. SR–BX–2009–015]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Order Handling and Exposure Periods on the Boston Options Exchange Facility

March 4, 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 February 27, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend certain Rules of the Boston Options Exchange (“BOX”) to reduce the order handling and exposure periods contained within the BOX Rules from three seconds to one second. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 reduce the order handling and exposure periods from three seconds to one second in the Supplementary Material to Section 17 (Customer Orders and Order Flow Providers) and in Section 18 (The Price Improvement Period (“PIP”)) of Chapter V (Doing Business on BOX) of the BOX Rules. These sections require that orders entered into the BOX limit order book (“BOX Book”), or the PIP, respectively, are currently exposed to all market participants for three seconds before the orders are automatically executed, giving Options Participants (“Participants”) an opportunity to enter additional trading interests.

Chapter V of the BOX Rules outlines certain requirements related to order handling by BOX Options Participants and Market Makers. A Participant may not execute an order it represents as agent with a facilitation or a solicited order unless it complies with the order exposure requirements contained in Chapter V, Section 17, Supplementary Materials .02 and .03. Specifically, Supplementary Material .02 to Section 17 provides that an Options Participant may not cause the execution of an order it represents as agent on BOX through the use of orders it solicited unless the agency order is first exposed to the BOX Book for at least three seconds. Furthermore, Supplementary Material .03 to Section 17 provides that an order flow provider (“OFP”) may not execute as principal an order it represents as agent unless the OFP (i) exposes the order to the BOX Book for three seconds; (ii) has been bidding or offering on BOX for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) sends the agency order to the PIP or Universal Price Improvement Period (“UPIP”). Under the proposal, these time periods would be reduced to one second.

The Exchange is also proposing to reduce the PIP in Section 18 of Chapter V from three seconds to one second. Currently the PIP allows Participants to designate certain customer orders for

price improvement and submit such orders to the PIP with a matching contra order (“Primary Improvement Order”). Once an order is submitted to the PIP, BOX broadcasts a message to Options Participants that commences the PIP and (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, price and side of the market of the order; and (3) states when the PIP will conclude. This proposal would reduce the PIP to one second.

When approving the existing three second order handling and exposure periods, the Commission concluded that, in the electronic environment of BOX, reducing these time periods to three seconds was fully consistent with the electronic nature of the BOX market.<sup>3</sup> BOX recognized that three seconds would not be long enough to allow human interaction with orders. Rather, Participants have been operating with sufficiently automated electronic systems so that they can react and respond to orders in a meaningful way within three seconds and BOX fully anticipates that this will continue within the proposed one second time frame. BOX believes that further reducing its order handling and exposure periods from three seconds to one second will benefit all market participants. BOX believes it is in all participants’ best interests to minimize the time of the exposure period while continuing to allow Participants adequate time to electronically respond, as both the order being exposed and Participants responding are subject to market risk during the exposure period. Indeed, most participants wait until the end of the last second of the current three second period before responding to exposed orders so as to minimize market risk. BOX believes that one second will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.

Recently, BOX distributed a survey to Participants that regularly participate in the PIP or would otherwise be affected by this proposal. To substantiate that its Participants could receive, process, and communicate a response back to BOX within one second, the survey asked Participants to identify (i) approximately how many milliseconds it takes for an order broadcast from BOX

<sup>11</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 53854; (May 24, 2006), 71 FR 30975 (May 31, 2006) (SR–BSE–2006–23).