

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59101; File No. 4-575]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Boston Stock Exchange, Incorporated

December 15, 2008.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on December 8, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Boston Stock Exchange, Incorporated ("BX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated December 5, 2008 ("17d-2 Plan" or the "Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

#### I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>4</sup> Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>5</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>6</sup> With respect to

a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>7</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>8</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>9</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

#### II. Proposed Plan

On August 29, 2008, BX was acquired by The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). At the time of this acquisition, BX was not operating a venue for trading cash equities. BX has since proposed to adopt a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equity trading.<sup>10</sup> The proposed new BX rules, in particular the member conduct rules that would be the Common Rules under the proposed Plan, are based to a substantial extent on the rules of the NASDAQ Stock Market LLC ("NASDAQ Exchange"),<sup>11</sup> which, in turn, are based to a substantial extent on the comparable rules of FINRA. The NASDAQ Exchange currently is party to a 17d-2 plan with FINRA.<sup>12</sup> The proposed Plan would allocate regulatory responsibility between BX and FINRA in a manner similar to the allocation of regulatory responsibility that currently exists between the NASDAQ Exchange and FINRA.

Accordingly, the proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both FINRA and BX.<sup>13</sup> Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "Rules Certification for 17d-2 Agreement with FINRA," referred to herein as the "Certification") that lists every BX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to BX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BX that are substantially similar

<sup>10</sup> See Securities Exchange Act Release No. 58927 (November 10, 2008), 73 FR 69685 (November 19, 2008) (SR-BSE-2008-48) (notice of proposed rule change).

<sup>11</sup> See *id.* at 73 FR 69686.

<sup>12</sup> See Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (order approving and declaring effective the plan between the NASDAQ Exchange and NASD (n/k/a FINRA)).

<sup>13</sup> The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

<sup>3</sup> 15 U.S.C. 78s(g)(1).

<sup>4</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<sup>5</sup> 15 U.S.C. 78q(d)(1).

<sup>6</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>7</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>8</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>9</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

to the applicable rules of FINRA, as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules").<sup>14</sup> Common Rules would not include the application of any BX rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d-2.<sup>15</sup> In the event that a Dual Member is the subject of an investigation relating to a transaction on BX, the plan acknowledges that BX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.<sup>16</sup>

Under the Plan, BX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving BX's own marketplace; registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties and obligations as a DEA pursuant to Rule 17d-1 under the Act; and any BX rules that are not Common Rules.<sup>17</sup>

The text of the proposed 17d-2 Plan is as follows:

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND BOSTON STOCK EXCHANGE, INCORPORATED PURSUANT TO RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and Boston Stock Exchange, Incorporated ("BX"), is made this 5th day of December, 2008 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder, which permits agreements between self-regulatory

organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BX may be referred to individually as a "party" and together as the "parties."

*Whereas*, FINRA and BX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

*Whereas*, FINRA and BX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

*Now, therefore*, in consideration of the mutual covenants contained hereinafter, FINRA and BX hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "BX Rules" or "FINRA Rules" shall mean: (i) The rules of BX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "Common Rules" shall mean BX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, BX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock

Exchange, Inc. approved by the Commission on October 17, 2008.

(c) "Dual Members" shall mean those BX members that are also members of FINRA and the associated persons therewith.

(d) "Effective Date" shall have the meaning set forth in paragraph 14.

(e) "Enforcement Responsibilities" shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the NASD Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) "Regulatory Responsibilities" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, BX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BX Rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BX or FINRA, BX shall submit an updated list of Common Rules to FINRA for review which shall add BX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities"

<sup>14</sup> See paragraph 1(b) of the proposed 17d-2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either BX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that BX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

<sup>15</sup> See Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4-566) (notice of filing and order approving and declaring effective the plan). The Certification identifies two Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the separate multiparty agreement.

<sup>16</sup> See paragraph 6 of the proposed 17d-2 Plan.

<sup>17</sup> See paragraph 2 of the proposed 17d-2 Plan.

does not include, and BX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the "Retained Responsibilities") the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BX's own marketplace;

(b) Registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) Any BX Rules that are not Common Rules.

3. *Dual Members.* Prior to the Effective Date, BX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to BX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that FINRA becomes aware of apparent violations of any BX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BX of those apparent violations for such response as BX deems appropriate. In the event that BX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained

Responsibilities, BX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings. Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BX, BX may in its discretion assume concurrent jurisdiction and responsibility.

7. *Continued Assistance.*

(a) FINRA shall make available to BX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BX any information it obtains about Dual Members which reflects adversely on their financial condition. BX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Dual Member Applications.*

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both BX and FINRA or associated with Dual Members thereof. Upon request, FINRA shall advise BX of any changes of allied members, partners, officers, registered personnel and other persons required to be

approved by the rules of both BX and FINRA.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BX advised of its actions in this regard for such subsequent proceedings as BX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination meets the BX requirements for general membership or for specified categories of membership or participation in BX, such as Equities Market Maker, Equities ECN, Order Entry Firm, or any similar type of BX membership or participation that is created after this Agreement is executed. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of BX, or a person associated with, or requesting association with, a member or participant of BX.

9. *Branch Office Information.* FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise BX of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.* BX shall forward to FINRA copies of all customer complaints involving Dual Members received by BX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. *Advertising.* FINRA shall assume responsibility to review the advertising

of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

12. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

13. *Termination.* This Agreement may be terminated by BX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

14. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

15. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, BX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC, in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the

resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 15 shall interfere with a party's right to terminate this Agreement as set forth herein.

16. *Notification of Members.* BX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. *Limitation of Liability.* Neither FINRA nor BX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BX with respect to any of the responsibilities to be performed by each of them hereunder.

19. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and BX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BX of any and all responsibilities with respect to matters

allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

20. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

*In witness whereof,* each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

Boston Stock Exchange, Incorporated

By: \_\_\_\_\_

Name:

Title:

Financial Industry Regulatory Authority, Inc.

By: \_\_\_\_\_

Name:

Title:

**Exhibit 1**

Boston Stock Exchange, Incorporated ("BX") hereby certifies that the requirements contained in the BX rules listed below are identical to, or substantially similar to, the NASD and FINRA rules noted below:

**RULES CERTIFICATION FOR 17d-2 AGREEMENT WITH FINRA**

BX Rule	FINRA (or NASD) Rule
IM-1002-2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces.	NASD IM-1000-2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces.
IM-1002-3. Failure to Register Personnel .....	NASD IM-1000-3. Failure to Register Personnel.
IM-1002-4. Branch Offices and Offices of Supervisory Jurisdiction .....	NASD IM-1000-4. Branch Offices and Offices of Supervisory Jurisdiction.
1011. Definitions .....	NASD Rule 1011. Definitions.
1012. General Provisions (provisions relating to Rule 1017 and registration of branch offices only)..	NASD Rule 1012. General Provisions (provisions relating to Rule 1017 and registration of branch offices only).
1014. Department Decision (provisions relating to Rule 1017 only). .....	NASD Rule 1014. Department Decision (provisions relating to Rule 1017 only).
1017. Application for Approval of Change in Ownership, Control, or Business Operations..	NASD Rule 1017. Application for Approval of Change in Ownership, Control, or Business Operations.
1021. Registration Requirements .....	NASD Rule 1021. Registration Requirements.
1022. Categories of Principal Registration .....	NASD Rule 1022. Categories of Principal Registration.
IM-1022-2. Limited Principal—General Securities Sales Supervisor. ....	NASD IM-1022-2. Limited Principal—General Securities Sales Supervisor.
1031. Registration Requirements .....	NASD Rule 1031. Registration Requirements.
1032. Categories of Representative Registration .....	NASD Rule 1032. Categories of Representative Registration.
1050. Research Analysts .....	NASD Rule 1050. Research Analysts.
1060. Persons Exempt from Registration .....	NASD Rule 1060. Persons Exempt from Registration.

## RULES CERTIFICATION FOR 17d-2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
1070. Qualification Examinations and Waiver of Requirements .....	NASD Rule 1070. Qualification Examinations and Waiver of Requirements.
1080. Confidentiality of Examinations .....	NASD Rule 1080. Confidentiality of Examinations.
1090. Foreign Members .....	NASD Rule 1090. Foreign Members.
1120. Continuing Education Requirements .....	NASD Rule 1120. Continuing Education Requirements.
1140. Electronic Filing Rules .....	NASD Rule 1140. Electronic Filing Rules.
1150. Executive Representative .....	NASD Rule 1150. Executive Representative.
1160. Contact Information Requirements .....	NASD Rule 1160. Contact Information Requirements.
2110. Standards of Commercial Honor and Principles of Trade * .....	FINRA 2010. Standards of Commercial Honor and Principles of Trade *.
IM-2110-2. Trading Ahead of Customer Limit Orders .....	NASD IM-2110-2. Trading Ahead of Customer Limit Orders.
IM-2110-3. Front Running Policy .....	NASD IM-2110-3. Front Running Policy.
IM-2110-4. Trading Ahead of Research Reports .....	NASD IM-2110-4. Trading Ahead of Research Reports.
IM-2110-5. Anti-Intimidation/Coordination .....	NASD IM-2110-5. Anti-Intimidation/Coordination.
IM-2110-6. Confirmation of Callable Common Stock .....	NASD IM-2110-6. Confirmation of Callable Common Stock.
IM-2110-7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes.	NASD IM-2110-7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes.
2111. Trading Ahead of Customer Market Orders .....	NASD 2111. Trading Ahead of Customer Market Orders.
2120. Use of Manipulative, Deceptive or Other Fraudulent Devices * .....	FINRA Rule 2020. Use of Manipulative, Deceptive or Other Fraudulent Devices *.
2210. Communications with the Public .....	NASD Rule 2210. Communications with the Public.
IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading.	NASD IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading.
2211. Institutional Sales Material and Correspondence .....	NASD Rule 2211. Institutional Sales Material and Correspondence.
2212. Telemarketing .....	NASD Rule 2212. Telemarketing.
2240. Disclosure of Control Relationship with Issuer .....	NASD Rule 2240. Disclosure of Control Relationship with Issuer.
2250. Disclosure of Participation or Interest in Primary or Secondary Distribution.	NASD Rule 2250. Disclosure of Participation or Interest in Primary or Secondary Distribution.
2260. Forwarding of Proxy and Other Materials .....	NASD Rule 2260. Forwarding of Proxy and Other Materials.
IM-2260. Suggested Rates of Reimbursement .....	NASD IM-2260. Suggested Rates of Reimbursement.
2270. Disclosure of Financial Condition to Customers .....	NASD Rule 2270. Disclosure of Financial Condition to Customers.
2290. Fairness Opinions .....	FINRA Rule 5150. Fairness Opinions.
2310. Recommendations to Customers (Suitability) .....	NASD Rule 2310. Recommendations to Customers (Suitability).
IM-2310-2. Fair Dealing with Customers .....	NASD IM-2310-2. Fair Dealing with Customers.
IM-2310-3. Suitability Obligations to Institutional Customers .....	NASD IM-2310-3. Suitability Obligations to Institutional Customers.
2320. Best Execution and Interpositioning .....	NASD Rule 2320. Best Execution and Interpositioning.
IM-2320. Interpretive Guidance with Respect to Best Execution Requirements.	NASD IM-2320. Interpretive Guidance with Respect to Best Execution Requirements.
2330. Customers' Securities or Funds .....	NASD Rule 2330. Customers' Securities or Funds.
IM-2330. Segregation of Customers' Securities .....	NASD IM-2330. Segregation of Customers' Securities.
2340. Customer Account Statements .....	NASD Rule 2340. Customer Account Statements.
2341. Margin Disclosure Statement .....	NASD Rule 2341. Margin Disclosure Statement.
2342. SIPC Information .....	NASD Rule 2342. SIPC Information.
2360. Approval Procedures for Day Trading Accounts .....	NASD Rule 2360. Approval Procedures for Day Trading Accounts.
2361. Day-Trading Risk Disclosure Statement .....	NASD Rule 2361. Day-Trading Risk Disclosure Statement.
2370. Borrowing From or Lending to Customers .....	NASD Rule 2370. Borrowing From or Lending to Customers.
2430. Charges for Services Performed .....	NASD Rule 2430. Charges for Services Performed.
2441. Net Transactions with Customers .....	NASD Rule 2441. Net Transactions with Customers.
2460. Payments for Market Making .....	NASD Rule 2460. Payments for Market Making.
2510. Discretionary Accounts .....	NASD Rule 2510. Discretionary Accounts.
2520. Margin Requirements .....	NASD Rule 2520. Margin Requirements.
2810. Direct Participation Programs .....	NASD Rule 2810. Direct Participation Programs.
2830. Investment Company Securities .....	NASD Rule 2830. Investment Company Securities.
2841. General .....	NASD Rule 2841. General.
2842. Definitions .....	NASD Rule 2842. Definitions.
2843. Account Approval .....	NASD Rule 2843. Account Approval.
2844. Suitability .....	NASD Rule 2844. Suitability.
2845. Discretionary Accounts .....	NASD Rule 2845. Discretionary Accounts.
2846. Supervision of Accounts .....	NASD Rule 2846. Supervision of Accounts.
2847. Customer Complaints .....	NASD Rule 2847. Customer Complaints.
2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants.	NASD Rule 2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants
2849. Maintenance of Records .....	NASD Rule 2849. Maintenance. of Records.
2850. Position Limits .....	NASD Rule 2850. Position Limits.
2851. Exercise Limits .....	NASD Rule 2851. Exercise Limits.
2853. Liquidation of Index Warrant Positions .....	NASD Rule 2853. Liquidation of Index Warrant Positions.
2910. Disclosure of Financial Condition to Other Members .....	NASD Rule 2910. Disclosure of Financial Condition to Other Members.
3010. Supervision .....	NASD Rule 3010. Supervision.
IM-3010-1. Standards for Reasonable Review .....	NASD IM-3010-1. Standards for Reasonable Review.
3011. Anti-Money Laundering Compliance Program .....	NASD Rule 3011. Anti-Money Laundering Compliance Program.
IM-3011-1. Independent Testing Requirements .....	NASD IM-3011-1. Independent Testing Requirements.

## RULES CERTIFICATION FOR 17d-2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
IM-3011-2. Review of Anti-Money Laundering Compliance Person Information.	NASD IM-3011-2. Review of Anti-Money Laundering Compliance Person Information.
3012. Supervisory Control System .....	NASD Rule 3012. Supervisory Control System.
3013. Annual Certification of Compliance and Supervisory Processes ..	FINRA Rule 3130. Annual Certification of Compliance and Supervisory Processes.
IM-3013. Annual Compliance and Supervision Certification .....	FINRA Rule 3130. Annual Certification of Compliance and Supervisory Processes.
3020. Fidelity Bonds .....	NASD Rule 3020. Fidelity Bonds.
3030. Outside Business Activities of an Associated Person .....	NASD Rule 3030. Outside Business Activities of an Associated Person.
3040. Private Securities Transactions of an Associated Person .....	NASD Rule 3040. Private Securities Transactions of an Associated Person.
3050. Transactions for or by Associated Persons .....	FINRA Rule 3050. Transactions for or by Associated Persons.
3060. Influencing or Rewarding Employees of Others .....	FINRA Rule 3220. Influencing or Rewarding Employees of Others.
3070. Reporting Requirements .....	NASD Rule 3070. Reporting Requirements.
3080. Disclosure to Associated Persons When Signing Form U-4 .....	NASD Rule 3080. Disclosure to Associated Persons When Signing Form U-4.
3090. Transactions Involving Exchange Employees .....	FINRA Rule 2070. Transactions Involving FINRA Employees.
3110. Books and Records .....	NASD Rule 3110. Books and Records
IM-3110. Customer Account Information .....	NASD IM-3110. Customer Account Information.
3120. Use of Information Obtained in Fiduciary Capacity .....	NASD Rule 3120. Use of Information Obtained in Fiduciary Capacity.
3121. Custodian of the Record .....	NASD Rule 3121. Custodian of the Record.
3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.	NASD Rule 3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.
IM-3130 Restrictions on Member's Activity .....	NASD IM-3130 Restrictions on Member's Activity.
3140. Approval of Change in Exempt Status Under SEC Rule 15c3-3	NASD Rule 3140. Approval of Change in Exempt Status Under SEC Rule 15c3-3.
3150. Reporting Requirements for Clearing Firms .....	NASD Rule 3150. Reporting Requirements for Clearing Firms.
IM-3150. Exemptive Relief .....	NASD IM-3150. Exemptive Relief.
3160. Extensions of Time under Regulation T and SEC Rule 15c3-3 ...	NASD Rule 3160. Extensions of Time under Regulation T and SEC Rule 15c3-3.
3220. Adjustment of Open Orders .....	NASD Rule 3220. Adjustment of Open Orders.
3230. Clearing Agreements .....	NASD Rule 3230. Clearing Agreements.
3310. Publication of Transactions and Quotations .....	NASD Rule 3310. Publication of Transactions and Quotations.
IM-3310. Manipulative and Deceptive Quotations .....	NASD IM-3310. Manipulative and Deceptive Quotations.
3320. Offers at Stated Prices .....	NASD Rule 3320. Offers at Stated Prices.
3330. Payment Designed to Influence Market Prices, Other than Paid Advertising.	NASD Rule 3330. Payment Designed to Influence Market Prices, Other than Paid Advertising.
3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.	NASD Rule 3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.
3351. Trading Practices .....	FINRA Rule 6140. Other Trading Practices.
3360. Short-Interest Reporting .....	FINRA Rule 4560. Short-Interest Reporting.
3370. Prompt Receipt and Delivery of Securities .....	NASD Rule 3370. Prompt Receipt and Delivery of Securities.
3380. Order Entry and Execution Practices .....	NASD Rule 3380. Order Entry and Execution Practices.
3510. Business Continuity Plans .....	NASD Rule 3510. Business Continuity Plans.
3520. Emergency Contact Information .....	NASD Rule 3520. Emergency Contact Information.
6951. Definitions .....	FINRA Rule 7410. Definitions.
6952. Applicability .....	FINRA Rule 7420. Applicability.
6953. Synchronization of Member Business Clocks .....	FINRA Rule 7430. Synchronization of Member Business Clocks.
6954. Recording of Order Information .....	FINRA Rule 7440. Recording of Order Information.
6955. Order Data Transmission Requirements .....	FINRA Rule 7450. Order Data Transmission Requirements.
6956. Violation of Order Audit Trail System Rules .....	FINRA Rule 7460. Violation of Order Audit Trail System Rules.
6958. Exemption to the Order Recording and Data Transmission Requirements.	FINRA Rule 7470. Exemption to the Order Recording and Data Transmission Requirements.
8110. Availability of Manual to Customers .....	FINRA Rule 8110. Availability of Manual to Customers.
8120. Definitions .....	FINRA Rule 8120. Definitions.
10100. Jurisdiction .....	FINRA Rule 10100. Administrative Provisions.
IM-10100. Failure to Act Under Provisions of Code of Arbitration Procedure.	FINRA IM-10100. Failure to Act Under Provisions of Code of Arbitration Procedure.
10101. Matters Eligible for Submission .....	FINRA Rule 10101. Matters Eligible for Submission.
10102. Non-Waiver of Objects and Purposes .....	FINRA Rule 10102. National Arbitration and Mediation Committee.
11100. Scope of Uniform Practice Code .....	NASD Rule 11100. Scope of Uniform Practice Code.
11110. The Exchange's Regulation Department .....	NASD Rule 11110. The Exchange's Regulation Department.
IM-11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff.	NASD IM-11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff.
11120. Definitions .....	NASD Rule 11120. Definitions.
11130. When, As and If Issued/Distributed Contracts .....	NASD Rule 11130. When, As and If Issued/Distributed Contracts.
IM-11130. Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract.	NASD IM-11130. Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract.
11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants".	NASD Rule 11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants".

## RULES CERTIFICATION FOR 17d-2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
11150. Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat” ..	NASD Rule 11150. Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”.
11160. “Ex” Liquidating Payments .....	NASD Rule 11160. “Ex” Liquidating Payments.
11170. Transactions in “Part-Redeemed” Bonds .....	NASD Rule 11170. Transactions in “Part-Redeemed” Bonds.
11190. Reconfirmation and Pricing Service Participants .....	NASD Rule 11190. Reconfirmation and Pricing Service Participants.
11210. Sent By Each Party .....	NASD Rule 11210. Sent By Each Party.
IM-11210. Uniform Comparison Form .....	NASD IM-11210. Uniform Comparison Form.
11220. Description of Securities .....	NASD Rule 11220. Description of Securities.
11310. Book-Entry Settlement .....	NASD Rule 11310. Book-Entry Settlement.
11320. Dates of Delivery .....	NASD Rule 11320. Dates of Delivery.
11330. Payment .....	NASD Rule 11330. Payment.
11340. Stamp Taxes .....	NASD Rule 11340. Stamp Taxes.
11350. Part Delivery .....	NASD Rule 11350. Part Delivery.
11360. Units of Delivery .....	NASD Rule 11360. Units of Delivery.
IM-11360. Uniform Delivery Ticket Form .....	NASD IM-11360. Uniform Delivery Ticket Form.
11361. Units of Delivery—Stocks .....	NASD Rule 11361. Units of Delivery—Stocks.
11362. Units of Delivery—Bonds .....	NASD Rule 11362. Units of Delivery—Bonds.
11363. Units of Delivery—Unit Investment Trust Securities .....	NASD Rule 11363. Units of Delivery—Unit Investment Trust Securities.
11364. Units of Delivery—Certificates of Deposit for Bonds .....	NASD Rule 11364. Units of Delivery—Certificates of Deposit for Bonds.
IM-11364. Trading Securities As “Units” or Bonds “With Stock” .....	NASD IM-11364. Trading Securities As “Units” or Bonds “With Stock”.
11410. Acceptance of Draft .....	NASD Rule 11410. Acceptance of Draft.
11510. Delivery of Temporary Certificates .....	NASD Rule 11510. Delivery of Temporary Certificates.
11520. Delivery of Mutilated Securities .....	NASD Rule 11520. Delivery of Mutilated Securities.
11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless.	NASD Rule 11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless.
11540. Delivery Under Government Regulations .....	NASD Rule 11540. Delivery Under Government Regulations.
11550. Assignments and Powers of Substitution; Delivery of Registered Securities.	NASD Rule 11550. Assignments and Powers of Substitution; Delivery of Registered Securities.
IM-11550. Uniform Transfer Instructions Form .....	NASD IM-11550. Uniform Transfer Instructions Form.
11560. Certificate of Company Whose Transfer Books Are Closed .....	NASD Rule 11560. Certificate of Company Whose Transfer Books Are Closed.
IM-11560. Sample Ownership Transfer Indemnification Stamp .....	NASD IM-11560. Sample Ownership Transfer Indemnification Stamp.
11570. Certificates in Various Names .....	NASD Rule 11570. Certificates in Various Names.
11571. Certificate in Name of Corporation .....	NASD Rule 11571. Certificate in Name of Corporation.
IM-11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency.	NASD IM-11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency.
11572. Certificate in Name of Firm .....	NASD Rule 11572. Certificate in Name of Firm.
11573. Certificate in Name of Dissolved Firm Succeeded by New Firm	NASD Rule 11573. Certificate in Name of Dissolved Firm Succeeded by New Firm.
11574. Certificate in Name of Deceased Person, Trustee, etc. ....	NASD Rule 11574. Certificate in Name of Deceased Person, Trustee, etc.
IM-11574. Sample Limited Partnership Change of Trustee Form .....	NASD IM-11574. Sample Limited Partnership Change of Trustee Form.
11610. Liability for Expenses .....	NASD Rule 11610. Liability for Expenses.
11620. Computation of Interest .....	NASD Rule 11620. Computation of Interest.
11630. Due-Bills and Due-Bill Checks .....	NASD Rule 11630. Due-Bills and Due-Bill Checks.
IM-11630. Sample Due-Bill Forms .....	NASD IM-11630. Sample Due-Bill Forms.
11640. Claims for Dividends, Rights, Interest, etc. ....	NASD Rule 11640. Claims for Dividends, Rights, Interest, etc.
11650. Transfer Fees .....	NASD Rule 11650. Transfer Fees
11710. General Provisions .....	NASD Rule 11710. General Provisions.
IM-11710. Uniform Reclamation Form .....	NASD IM-11710. Uniform Reclamation Form.
11720. Irregular Delivery—Transfer Refused—Lost or Stolen Securities	NASD Rule 11720. Irregular Delivery—Transfer Refused—Lost or Stolen Securities.
IM-11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled.	NASD IM-11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled.
11730. Called Securities .....	NASD Rule 11730. Called Securities.
11740. Marking to the Market .....	NASD Rule 11740. Marking to the Market.
11810. Buying-In .....	NASD Rule 11810. Buying-In.
IM-11810. Sample Buy-In Forms .....	NASD IM-11810. Sample Buy-In Forms.
11820. Selling-Out .....	NASD Rule 11820. Selling-Out.
11840. Rights and Warrants .....	NASD Rule 11840. Rights and Warrants.
IM-11840. Sample Letter of Indemnity .....	NASD IM-11840. Sample Letter of Indemnity.
11860. Acceptance and Settlement of COD Orders .....	NASD Rule 11860. Acceptance and Settlement of COD Orders.
11870. Customer Account Transfer Contracts .....	NASD Rule 11870. Customer Account Transfer Contracts.
IM-11870. Sample Transfer Instruction Forms .....	NASD IM-11870. Sample Transfer Instruction Forms.
11880. Settlement of Syndicate Accounts .....	NASD Rule 11880. Settlement of Syndicate Accounts.

\* FINRA shall not perform Regulatory or Enforcement Responsibilities under this Agreement for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. as approved by the SEC on October 17, 2008.

The following provisions are covered by the Agreement between the Parties:

- SEC '34 Act Section 28(e) Effect on Existing Law
- SEC '34 Act Rule 10b-10 Confirmation of Transactions
- SEC '34 Act Rule 203 of Regulation SHO Borrowing and Delivery Requirements
- SEC '34 Act Rule 606 of Regulation NMS Disclosure of Order Routing Information
- SEC '34 Act Rule 607 of Regulation NMS Customer Account Statements
- FINRA shall not perform Regulatory or Enforcement Responsibilities under this Agreement for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. as approved by the SEC on October 17, 2008.

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### III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act<sup>18</sup> and Rule 17d-2 thereunder,<sup>19</sup> after January 6, 2009, the Commission may, by written notice, declare the plan submitted by BX and FINRA, File No. 4-575, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

### IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve BX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the

foregoing. Comments may be submitted by any of the following methods:

#### Electronic comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-575 on the subject line.

#### Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number 4-575. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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, on official business days between the hours of 10 am and 3 pm. Copies of the plan also will be available for inspection and copying at the principal offices of BX and 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 4-575 and should be submitted on or before January 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-30321 Filed 12-19-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59095; File No. SR-BATS-2008-012]

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

December 12, 2008.

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 December 9, 2008, BATS Exchange, Inc. ("BATS" or the "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 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 proposes to modify its fee schedule applicable to use of the Exchange effective December 12, 2008 in order to (i) implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies, and (ii) substitute the current fee schedule with a fee schedule in a revised format.

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> 15 U.S.C. 78q(d)(1).

<sup>19</sup> 17 CFR 240.17d-2.

<sup>20</sup> 17 CFR 200.30-3(a)(34).