

IV. Exemption From Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

BATS Y Exchange proposes to incorporate by reference certain FINRA rules as Exchange rules. Thus, for certain Exchange rules, Exchange members will comply with an Exchange rule by complying with the FINRA rule referenced.¹⁶⁰ In connection with its proposal to incorporate FINRA rules by reference, BATS Y Exchange requested, pursuant to Rule 240.0–12,¹⁶¹ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those BATS Y Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.¹⁶² BATS Y Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. BATS Y Exchange agrees to provide written notice to its members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed.¹⁶³

Using its authority under Section 36 of the Act,¹⁶⁴ the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.¹⁶⁵ Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules.

In addition, each such exempt SRO incorporated by reference only regulatory rules (*i.e.*, margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.*, did not “cherry-pick” certain individual rules within a category). Each such exempt SRO had reasonable procedures in place to

¹⁶⁰ BATS Y Exchange proposes to incorporate by reference the 12000 and 13000 Series of FINRA’s NASD Manual, the NASD Code of Arbitration Procedure for Customer and Industry Disputes. See BATS Y Exchange Rule 9.1.

¹⁶¹ See 17 CFR 240.0–12.

¹⁶² See to Elizabeth M. Murphy, Secretary, Commission, from Anders Franzon, Vice President and Associate General Counsel, BATS Exchange, Inc., dated June 30, 2010.

¹⁶³ BATS Exchange will provide such notice via a posting on the same Web site location where BATS Exchange will post its own rule filings pursuant to Commission Rule 19b–4(J). The posting will include a link to the location on the FINRA Web site where the proposed rule change is posted. See *id.*

¹⁶⁴ 15 U.S.C. 78mm.

¹⁶⁵ See, *e.g.*, NOM Approval Order, *supra* note 90; Nasdaq Exchange Registration Order, *supra* note 27; BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting BATS Y Exchange’s request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that BATS Y Exchange proposes to incorporate by reference. This exemption is conditioned upon BATS Y Exchange providing written notice to its members whenever FINRA proposes to change a rule that BATS Y Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one SRO. Consequently, the Commission grants BATS Y Exchange’s exemption request.

V. Conclusion

It is ordered that the application of BATS Y Exchange for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of BATS Y Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans.* BATS Y Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, and the Order Execution Quality Disclosure Plan.

B. *Intermarket Surveillance Group.* BATS Y Exchange must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by BATS Y Exchange under Rule 19d–1(c)(2) must be declared effective by the Commission.¹⁶⁶

D. *17d–2 Agreement.* An agreement pursuant to Rule 17d–2¹⁶⁷ between FINRA and BATS Y Exchange that allocates to FINRA regulatory responsibility for those matters specified above¹⁶⁸ must be approved by the Commission, or BATS Y Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Examination by the Commission.* BATS Y Exchange must have, and represent in a letter to the staff in the

Commission’s Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate BATS Y Exchange.

F. *Trade Processing and Exchange Systems.* BATS Y Exchange must have, and represent in a letter to the staff in the Commission’s Division of Trading and Markets that it has, adequate procedures and programs in place, as noted in Commission Automation Policy Review guidelines,¹⁶⁹ to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange’s systems.

G. *BATS Exchange Inbound Routing.* BATS Exchange must have in place rules approved by the Commission relating to an inbound routing structure that is consistent with what the Commission has approved for other national securities exchanges that receive orders from affiliated routers.¹⁷⁰

It is further ordered, pursuant to Section 36 of the Act,¹⁷¹ that BATS Y Exchange shall be exempt from the rule filing requirements of Section 19(b) of the Act¹⁷² with respect to the FINRA rules BATS Y Exchange proposes to incorporate by reference into BATS Y Exchange’s rules, subject to the conditions specified in this Order.

By the Commission.

Florence E. Harmon,
Deputy Secretary.

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COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62725; File No. 4–609]

Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps and Security-Based Swaps

AGENCY: Commodity Futures Trading Commission (“CFTC”) and Securities

¹⁶⁹ On November 16, 1989, the Commission published its first Automation Review Policy (“ARP I”), in which it created a voluntary framework for self-regulatory organizations to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy (“ARP II”) to clarify the types of review and reports that were expected from self-regulatory organizations. See Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989); and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

¹⁷⁰ See *supra* note 155.

¹⁷¹ 15 U.S.C. 78mm.

¹⁷² 15 U.S.C. 78s(b).

¹⁶⁶ 17 CFR 240.19d–1(c)(2).

¹⁶⁷ 17 CFR 240.17d–2.

¹⁶⁸ See *supra* notes 95 to 103 and accompanying text.

and Exchange Commission (“SEC”) (each, an “Agency,” and collectively, the “Agencies”).

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On August 20, 2010, commencing at 9 a.m. and ending at 12 p.m., staff of the Agencies will hold a public roundtable discussion at which invited participants will discuss governance and conflicts of interest in the context of certain authority that Sections 726 and 765 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) granted to the Agencies respectively. The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call is set forth below.

- U.S./Canada Toll-Free: (866) 312-4390.
- International Toll: (404) 537-3379.
- Conference ID: 94280143.

A transcript of the public roundtable discussion will be published on the CFTC’s governance rulemaking page at http://www.cftc.gov/LawRegulation/OTCDerivatives/OTC_9_DCOGovernance.html.

The roundtable discussion will take place in Lobby Level Hearing Room (Room 1000) at the CFTC’s headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The CFTC’s Office of Public Affairs at (202) 418-5080 or the SEC’s Office of Public Affairs at (202) 551-4120.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Friday, August 20, 2010, commencing at 9 a.m. and ending at 12 p.m. Members of the public who wish to submit their views on the topics addressed at the discussion, or on any other topics related to governance and conflicts of interest in the context of the Act, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; or
- Electronic submission to the e-mail address provided on the CFTC’s governance rulemaking page (all e-mails must reference “Dodd-Frank Governance” in the subject field); and/or by email to rule-comments@sec.gov

or through the comment form available at: <http://www.sec.gov/news/press/2010/2010-148.htm>.

All submissions will be reviewed jointly by the Agencies. All comments must be in English or be accompanied by an English translation. All submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

By the Securities and Exchange Commission.

Dated: August 16, 2010.

Elizabeth M. Murphy,
Secretary.

By the Commodity Futures Trading Commission.

Dated: August 16, 2010.

David A. Stawick,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62719; File No. SR-BX-2010-056]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Establishing Strike Price Intervals for Options on Trust Issued Receipts, Including Holding Company Depository Receipts

August 13, 2010.

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 9, 2010, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend Chapter IV, Section 6 (Series of Options

Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (“BOX”) to establish strike price intervals for options on Trust Issued Receipts (“TIRs”), including Holding Company Depository Receipts (“HOLDRs”). The text of the proposed rule change is available from the principal office of the Exchange, on the Commission’s Web site at <http://www.sec.gov>, 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 this filing is to amend Chapter IV, Section 6, Supplementary Material .01 of the BOX Rules to allow BOX to list options on Trust Issued Receipts (“TIRs”), including Holding Company Depository Receipts (“HOLDRs”), in \$1 or greater strike price intervals, where the strike price is \$200 or less, and \$5 or greater where the strike price is greater than \$200.³

Currently, the strike price intervals for options on TIRs are as follows: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.⁴

BOX is seeking to permit \$1 strikes for options on TIRs where the strike price is less than \$200 because TIRs have characteristics similar to exchange traded funds (“ETFs”). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable

³ HOLDRs are a type of TIR and the current proposal would permit \$1 strikes for options on HOLDRs where the strike price is less than \$200.

⁴ See Chapter IV, Section 6(d) of the BOX Rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.