

expand the SOX index will allow the Exchange to seamlessly continue listing this premiere index in a manner that even more effectively reflects the semiconductor sector.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or 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 Exchange consents, the Commission shall: (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-Phlx-2010-20 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-Phlx-2010-20*. 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 Web site viewing and printing 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-Phlx-2010-20* and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61542; File No. SR-FINRA-2009-093]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830-2 ("IM-2830-2") (Maintaining the Public Offering Price) and Incorporated NYSE Rule 413 (Uniform Forms) as Part of the Process of Developing a Consolidated FINRA Rulebook**

February 18, 2010.

On December 23, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830-2 ("IM-2830-2") (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms), as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on January 19, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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>4</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>5</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 the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by eliminating rules that are outdated, duplicative of other FINRA rules, or addressed by the Federal rules or regulations. As further described in the Notice, FINRA stated that NASD Rule 2450 should be repealed in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. FINRA also stated that the hypothecation prohibition in NASD Rule 2450 should be repealed because it would no longer be relevant as it is predicated on a partial or installment payment under the rule. In addition, FINRA noted that, since the adoption of NASD IM-2830-2, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members. FINRA also noted that NASD IM-2830-2 largely duplicates the requirement in Section 22(d) of the Investment Company Act to sell mutual fund shares to investors at the current public offering price. As a

<sup>1</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. 61319 (January 8, 2010), 75 FR 2897 ("Notice").

<sup>4</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>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

result, FINRA stated that NASD IM-2830-2 no longer serves any useful purpose, and proposed not to incorporate its content into the consolidated FINRA rulebook. Furthermore, FINRA proposed to repeal Incorporated NYSE Rule 413, which requires members to adopt such uniform forms as the NYSE may prescribe to facilitate the orderly flow of transactions within the financial community. FINRA stated that its By-Laws contain several provisions by which FINRA may prescribe processes for members' activities, including the use of uniform forms. Thus, FINRA stated that Incorporated NYSE Rule 413 is duplicative of these provisions and should be repealed. In approving this proposed rule change, the Commission notes that FINRA members and their associated persons are required to comply with all applicable Federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-FINRA-2009-093) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61545; File No. SR-BATS-2009-032]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Fee Schedule To Impose Fees for Physical Ports Used To Connect to BATS Exchange

February 19, 2010.

On December 18, 2009, BATS Exchange, Inc. ("BATS" or "Exchange") 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 amend the fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange to begin charging for certain physical ports used to connect to the Exchange's systems. The proposed rule change was published for comment in the **Federal Register** on January 8, 2010.<sup>4</sup> The Commission received no comments regarding the proposal. On February 9, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order grants approval of the proposed rule change, as modified by Amendment No. 1.

BATS proposes to begin charging a monthly fee for certain physical ports<sup>6</sup> used to connect to the Exchange's system for order entry and receipt of data from the Exchange.<sup>7</sup> BATS states that under its current policy all physical ports are provided free of charge but Members and non-members are only permitted to establish up to four such physical port pairs.<sup>8</sup> Under the proposal, BATS will continue to provide four pairs of physical ports without charge to any Member or non-member that has been approved to connect to the Exchange. In addition, the Exchange will permit Members and non-members to establish additional physical ports at a charge of \$2,000 for each additional single physical port provided by the Exchange to any Member or non-member in any data center. The proposal applies to all Exchange constituents with physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus

that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients.

The Exchange states that very few Members or non-members require four physical ports for their operations related to the Exchange or would utilize more than four physical ports, and thus, the Exchange believes that the proposal should not affect many of the Exchange's constituents. However, the Exchange believes that Members and non-members that wish to pay for additional physical ports outside of those provided for free should have the ability to do so.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using the Exchange's facilities, and Section 6(b)(5) of the Act,<sup>11</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 Section 6(b)(8) of the Act,<sup>12</sup> which requires that the rules of an exchange not impose a 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>13</sup> 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 not unreasonably discriminatory.

The Commission believes that the proposed physical port fees are equitably allocated among Members and

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

<sup>3</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange. See BATS Rule 1.5(n).

<sup>4</sup> Securities Exchange Act Release No. 61260 (December 30, 2009), 75 FR 1109 ("Notice").

<sup>5</sup> In Amendment No. 1, the Exchange replaced the bracketed "[September 1, 2009]" with "[February 1, 2010]" in the proposed rule text to reflect the fact that the current fee schedule is dated February 1, 2010. Because the change in Amendment No. 1 is technical in nature, it is not subject to notice and comment.

<sup>6</sup> The Exchange states that a physical port is used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.*, either a cross-connection or a private line Ethernet connection to the Exchange's network within the data center).

<sup>7</sup> The Commission notes that BATS will implement the proposed physical port fees commencing on the first day of the month immediately following Commission approval of this proposed rule change (or on the date of approval, if on the first business day of a month). See Notice, *supra* note 4.

<sup>8</sup> A "pair" of ports refers to one port at the site of the Exchange's primary data center (including the expansion space located adjacent to such data center) and one port at the site of the Exchange's secondary data center.

<sup>9</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>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(8).

<sup>13</sup> 17 CFR 242.603(a).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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