conducting an exchange subject to section 11. This is supported by Rule 11a–2 which sets forth a number of specific requirements under which exchanges offers involving variable annuity contracts (and interests in separate accounts through which such contracts are issued) are permissible. All of the applicable requirements of the Rule concern the basis of the exchange and/or the fees that may be imposed, but the Rule does not regulate the manner by which investors may elect an option under an exchange offer. Accordingly, the Commission may find, and in the past has found, that a default election in an exchange offer is permissible if the application sets forth facts that demonstrate that the offeror cannot permit an offeree to retain its current investment and that the overall terms of the offer are otherwise fair and equitable to investors.

11. Moreover, Applicants state that the Commission staff has consistently taken ''no-action'' positions under section 22(e) of the Act with respect to the analogous issue of forced redemptions of mutual fund shares when certain conditions were met. In these situations, a basic investment decision (*i.e.*, the decision to redeem) was permitted to be made on behalf of investors on the basis of informed, implied consent. These letters, in effect, permit such forced redemptions on the basis of notice to shareholders and prospectus disclosure of those events which may trigger such a redemption (*i.e.*, account falling below a certain value, failure to provide a taxpayer identification number, negative balances in other accounts, etc.) and the absence of any action by a shareholder to take an available alternative route within a specified time period. Applicants submit that the communications which will be made to tax-exempt plan sponsors with respect to their rights under all of the Options to provide for timely and extensive disclosure comparable to that which is required for these automatic redemptions of mutual fund shares.

12. Applicants believe that the legislative history of section 11 makes it clear that Congress believed the potential harm to investors from ''switching'' was its use to extract additional sales charges from those investors. Consequently, prior applications under section 11(a) (and orders granted in response to those applications) appropriately focused on sales loads or sales load differentials and administrative fees to be imposed in connection with a proposed exchange offer. In granting approval orders requested in prior section 11 applications involving the exchange of one variable annuity contract for another, or the exchange of interests in one registered separate account for another, the Commission staff has considered whether or not the consummation of the exchange would have inequitable results for contract owners, and has viewed the absence of duplication of sales loads and administrative fees in effecting the exchanges as persuasive evidence that the proposed exchange does not present the abuses section 11 of the Act designed to prevent.

13. Applicants state that in the event that the Commission does not issue an order under section 11 approving the proposed exchange offers, Hartford Life will be forced, at great expense, to register the Unregistered DC Accounts and Account 457 as investment companies under the Act and to register interests issued in such Accounts issued through Modified Old Contracts and the Tax-Exempt 457 Contracts as securities under the 1933 Act. Registration of the Unregistered DC Accounts and Account 457 as investment companies would be particularly burdensome because each would have to comply with the extensive regulatory regime imposed by the Act. Applicants submit that any benefit to the government plan trustees and their plans (including plan participants) from such registration could not justify the great expense and other considerable burdens attendant to such registration. Because the government plan trustees and their plans make up the overwhelming majority of investors in each Unregistered DC Account and Account 457, Applicants believe that the proposed exchange offers represent a far more efficient, reasonable and balanced response to the inadvertent issuance of the Modified Old Contracts and the 457 Contracts to tax-exempt plan sponsors.

**Conclusion**

Applicants submit that, for the reasons discussed above, the terms of the proposed exchange offers are such that the offers would not entail any of the practices section 11 was intended to prevent and are otherwise fair and equitable to the tax-exempt plan sponsors, their plans and participants in their plans. For these reasons, Applicants submit that the terms of the proposed offers are consistent with the protection of investors, the standards that the Commission has applied to prior applications for orders under section 11(a) of the Act, and the purposes fairly intended by the public policies underlying section 11 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56299; File No. SR–BSE–2007–42]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

August 22, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''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 substantially prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Minimum Activity Charge (''MAC'') contained in the Fee Schedule for the Boston Options Exchange (''BOX''). The Exchange proposes to add a seventh category to its MAC table for classes with an Options Clearing Corporation Average Daily Volume (''OCC ADV'') of less than 2,000 contracts. In addition, the Exchange proposes to make a clerical correction to the BOX Fee Schedule to rectify an inadvertent omission from a previous rule filing.[5] The text of the proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02) (seeking to change the month in which the MAC reclassifications are calculated from January to July, among other proposed changes).

available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the MAC which is contained in the Fee Schedule for BOX. The MAC is currently determined using six ''categories'' of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by Options Clearing Corporation data. The Exchange now proposes to change the OCC ADV of Category F from less than 5,000 contracts to an OCC ADV between 2,000 and 4,999 contracts. In addition, the Exchange proposes to establish a seventh category, Category G, for options with an OCC ADV of less than 2,000 contracts, which will charge a MAC of $90 per month.

The purpose of establishing a seventh MAC category is to account for the effect that current market conditions have had on Market Maker participation in the less active options. In order to entice new and existing Market Makers to quote and trade in these less active classes, namely those trading with an OCC ADV of approximately 2,000 contracts or less, the Exchange believes it is necessary to adjust the Fee Schedule to better reflect the trading costs associated with those classes by applying a smaller MAC than what was previously charged for classes with an OCC ADV of less than 2,000 contracts.

With a more stratified Fee Schedule, Market Makers will now have greater incentive to quote and trade in those relatively less active classes. Therefore, a modified MAC Category F and the reduced MAC for new Category G will encourage more Market Makers into these markets. The Exchange believes that the proposal should promote competition in the less actively traded classes. While the Exchange recognizes that the proposal may increase quote activity in such classes, the Exchange believes that the benefits to increased competition would outweigh any concerns relating to quote capacity. The Exchange further believes that it will not experience an adverse impact on quote capacity as a result of this proposal.

In addition to refining the MAC Categories, the Exchange proposes to amend the BOX Fee Schedule to correct an inadvertent omission from a previous rule filing. The Exchange previously filed a proposed rule change to alter the month in which a class's OCC ADV category would be recalculated, from January to July.[6] The text of that proposed rule change did not include all of the necessary edits to the BOX Fee Schedule, and the Exchange now proposes to correct this omission.

*2. Statutory Basis*

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act,[8] in particular, which requires that an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

*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*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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*. Please include File No. SR–BSE–2007–42 on the subject line.

*Paper Comments*

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

All submissions should refer to File No. SR–BSE–2007–42. 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 will also 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 No. SR-

[6] *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

BSE–2007–42 and should be submitted on or before September 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–16956 Filed 8–27–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56297; File No. SR–NASD–2007–041]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change To Amend the Minimum Price-Improvement Standards Set Forth in NASD IM 2110–2, Trading Ahead of Customer Limit Order

August 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2007, the National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc.) 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 substantially prepared by FINRA.[3] 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

FINRA proposes to amend the minimum price-improvement standards set forth in NASD Interpretive Material (''IM'') 2110–2, Trading Ahead of Customer Limit Order. The text of the proposed rule change is available on FINRA's Web site (*http://www.finra.org*), at FINRA, 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, FINRA 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. FINRA 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

On February 26, 2007, the Commission approved SR–NASD–2005–146,[4] which expanded the scope of IM–2110–2[5] to apply to over-the-counter (''OTC'') equity securities.[6] The amendments relating to OTC equity securities are scheduled to become effective on November 26, 2007.[7] Among other changes, SR–NASD–2005–146 amended the minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order (''price-improvement standards'') as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread. For customer limit orders priced outside the best inside market, the member is required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

For example, if the best inside market for a security is $10 to $10.05 and a member is holding a customer limit order to buy priced at $10.01, the member would be permitted to buy at $10.02 or higher, without triggering the customer limit order. If the best inside market for a security is $.50 to $.51 and the member is holding a customer limit order to buy priced at $.50, the member would be permitted to buy at $.505 ($.50 + ½ ($.51–$.50)) or higher, without triggering the customer limit order.

FINRA is proposing to revise the minimum price improvement standards to address three issues. First, because the minimum price improvement standard is determined based on the lesser of a specified amount ($.01) or ½ of the inside spread, the specified amount acts as an ''upper limit'' on the minimum price improvement requirement. FINRA is concerned that the specified amount or upper limits on the minimum price improvement requirement (*i.e.*, $.01) is disproportionately high for securities trading below $.01 and should vary proportionately with the amount of the limit order price. To address this inconsistency, FINRA is proposing to add the following maximum upper limits for each price level: For customer limit orders priced less than $.01 but greater than or equal to $0.001, the minimum amount of price improvement required is the lesser of $0.001 or one-half (½) of the current inside spread. For customer limit orders priced less than $.001 but greater than or equal to $0.0001, the minimum amount of price improvement required is the lesser of $0.0001 or one-half (½) of the current inside spread. For customer limit orders priced less than $.0001 but greater than or equal to $0.00001, the minimum amount of price improvement required is the lesser of $0.00001 or one-half (½) of the current inside spread.[8] Lastly, for customer limit orders priced less than $.00001, the minimum amount of price improvement required is the lesser of

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[4] *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR–NASD–2005–146).

[5] Currently, IM–2110–2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

[6] *See* NASD Rule 6610(d) for definition of ''OTC equity security.''

[7] *See* Securities Exchange Act Release No. 56103 (July 19, 2007), 72 FR 40918 (July 25, 2007) (SR–NASD–2007–039).

[8] The proposed minimum price-improvement provisions in this proposed rule change do not supersede, alter or otherwise affect any of the minimum pricing increment restrictions under Rule 612 of Regulation NMS. Rule 612 of Regulation NMS prohibits market participants from displaying, ranking, or accepting bids or offers, orders, or indications of interest in any NMS stock priced in an increment smaller than $0.01 if the bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share. If the bid or offer, order, or indication of interest in any NMS stock is priced less than $1.00 per share, the minimum pricing increment is $0.0001. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (Regulation NMS Adopting Release).