

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2009-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. 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-BATS-2009-015 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12446 Filed 5-28-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59961; File No. SR-FINRA-2009-018]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt IM-2830-1 ("Breakpoint" Sales) in the Consolidated FINRA Rulebook

May 21, 2009.

On March 26, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association

of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change 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 of the proposal was published for comment in the Federal Register on April 20, 2009.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### I. Description of the Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup> FINRA proposed to adopt NASD IM-2830-1 ("Breakpoint" Sales), renumbered as FINRA Rule 2342, into the Consolidated FINRA Rulebook with the minor changes discussed below. NASD IM-2830-1 prohibits sales of mutual fund shares in amounts below a "breakpoint" if such sales are made "so as to share in the higher sales charges." In the context of mutual fund sales, a "breakpoint" is that point at which the sales charge is reduced for quantity purchases of fund shares.

The application of the standard in NASD IM-2830-1 depends on the facts and circumstances of particular transactions to determine whether a member executed a transaction for the purpose of earning a higher sales charge. In 1998, NASD IM-2830-1 was amended to address the use of modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives.<sup>5</sup> The amendments specify more precisely those facts and circumstances that FINRA will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD IM-2830-1. In making such

determinations, the rule provides that FINRA will consider, among other things, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers which is designed to meet their diversification needs and investment goals, and under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Breakpoint issues have been of concern to the regulatory community. On December 23, 2002, FINRA issued *Special Notice to Members* 02-85, which reminded firms of their obligation to apply correctly breakpoint discounts to front-end sales load mutual fund transactions.<sup>6</sup> In 2003, the staffs of FINRA, the SEC, and the NYSE conducted examinations of broker-dealers to assess their ability to deliver breakpoint discounts and memorialized the findings of those examinations in a joint report.<sup>7</sup> Concurrently, FINRA staff and industry members formed a joint task force to consider issues regarding breakpoints. The joint task force issued a report in July 2003 containing recommendations for the industry to facilitate the accurate delivery of breakpoint discounts.<sup>8</sup>

FINRA proposed to adopt NASD IM-2830-1 as FINRA Rule 2342, stating it believes this rule continues to be an important tool in regulating members' sales of mutual fund shares to ensure that they are not sold in dollar amounts just below breakpoints so as to share in higher sales charges. FINRA proposed to eliminate references to "just and equitable principles of trade" and make other minor changes to the text to reflect that it would be a stand-alone rule, rather than Interpretive Material, and to eliminate certain redundant text that is inconsistent with a rules-based format.

FINRA stated that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

<sup>6</sup> NASD *Special Notice to Members* 02-85, NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules (December 2002).

<sup>7</sup> See Joint SEC/NASD/NYSE Report of Examinations of Broker/Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (March 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006438>.

<sup>8</sup> See Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006422>.

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

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

<sup>3</sup> See Exchange Act Rel. No. 59754 (Apr. 13, 2009), 74 FR 18007 (Apr. 20, 2009).

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> See Securities Exchange Act Release No. 40659 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (Order Approving Proposed Rule Change Relating to Mutual Fund Breakpoint Sales).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

## II. Discussion and Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>10</sup> The Commission believes that the proposed rule change will continue to provide FINRA with an important tool in regulating members' sales of mutual fund shares, consistent with the goals of protecting investors and the public interest.

## III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2009-018) be, and hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12443 Filed 5-28-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59908; File No. SR-BX-2009-021]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Amend the Restated Certificate of Incorporation and By-Laws of NASDAQ OMX BX, Inc.

#### *Correction*

In notice document E9-11609, beginning on page 23459 in the issue of Tuesday, May 19, 2009, make the following correction:

On page 23462, in the second column, in the second line, "June 8, 2009" should read "June 9, 2009".

[FR Doc. Z9-11609 Filed 5-28-09; 8:45 am]

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

<sup>10</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>11</sup> 15 U.S.C. 78s(b)(2).

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

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending May 16, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT-OST-2009-0110.

*Date Filed:* May 11, 2009.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 1, 2009.

*Description:* Application of Federal State Unitary Air Enterprise of Ministry For Emergency Situations of Russia requesting a foreign air carrier permit enabling it to engage in charter foreign air transportation of property and mail between a point or points in the Russian Federation and a point or points in the United States and in other charter trips in foreign air transportation, including between any point or points in the United States and any point or points in a third country or countries, subject to pertinent national, bilateral and international rules and regulations.

*Docket Number:* DOT-OST-2009-0116.

*Date Filed:* May 12, 2009.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 2, 2009.

*Description:* Application of Key Lime Air Corp. requesting commuter air carrier authorization so that it may provide scheduled passenger service between Denver's Rocky Mountain Metropolitan Airport (BJC) and Grand Junction, Colorado (GJT).

*Docket Number:* DOT-OST-2009-0120.

*Date Filed:* May 14, 2009.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 4, 2009.

*Description:* Application of Vision Airlines, Inc. ("Vision") requesting an

amendment to its certificate of public convenience and necessity which would authorize Vision to engage in scheduled interstate air transportation of persons, property and mail with large aircraft.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E9-12570 Filed 5-28-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending May 16, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT-OST-2009-0113.

*Date Filed:* May 11, 2009.

*Parties:* Members of the International Air Transport Association.

*Subject:* CSC/31/Meet/005/09 dated April 8, 2009. Finally Adopted Resolutions: Resolution 623 and Recommended Practice 1630. Intended effective date: 1 October 2009.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E9-12576 Filed 5-28-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

*Docket Number:* FRA-2009-0037.

*Applicant:* Norfolk Southern Corporation, Mr. B. L. Sykes, Chief Engineer C&S Engineering, Communications & Signal Department,