

a national securities association.⁸ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,⁹ which requires, among other things that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, 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. The Commission also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(7) of the Act,¹⁰ which provides that FINRA members, or persons associated with its members, must be appropriately disciplined for violations of any provisions of the Act or FINRA's rules.

The Commission believes that making the pilot program permanent will provide FINRA with a mechanism to take action in certain situations against a member or an associated person that is alleged to have engaged, or is engaging, in conduct that violates Commission, FINRA, or NASD rules, when such intervention is necessary in order to prevent likely significant dissipation or conversion of assets or other significant harm to investors before the underlying disciplinary proceeding can be completed. At the same time, the Commission believes that FINRA's cease and desist provisions contain sufficient procedural protections to ensure that respondents have the opportunity for a fair hearing and, if applicable, review thereof. When it first sought cease and desist authority in 2003, FINRA said that it would use the authority sparingly and has, in fact, only used its authority once for a TCDO and once for a permanent cease and desist order.¹¹ FINRA stated in its Notice that if the proposal were adopted on a permanent basis, it would continue to use its cease and desist authority judiciously. The Commission expects that FINRA will continue to use this authority in an appropriate manner. The Commission believes it is reasonable and consistent with the Act for FINRA to adopt the cease and desist rules permanently to enable it to stop persons from engaging in securities transactions or conduct affecting the marketplace, in alleged violation of established rules, which is likely to cause harm to

investors or would adversely affect the public interest if not addressed expeditiously.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-FINRA-2009-035), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60313; File No. SR-BATS-2009-023]

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

July 15, 2009.

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 July 9, 2009, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 BATS Rule 15.1, entitled "Authority to Prescribe Dues, Fees, Assessments and Other Charges," effective immediately.

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 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 parts 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 modify BATS Rule 15.1 to adopt new paragraph (d), which will allow the Exchange to pass on certain, specific fees that it is charged by the company that operates the data center where the Exchange's System⁵ is located, as described in further detail below.

Exchange Members wishing to co-locate their trading hardware to the Exchange's System can do so by leasing space directly from the company that owns the data center. The Exchange has no involvement in determining the terms of any fees paid by the Member to lease co-location space and does not receive any proceeds from such fee. Certain Members of the Exchange maintain a co-location relationship with another Trading Center's⁶ system that is located in the same data center as the Exchange. To co-locate to the Exchange, rather than leasing additional space near the Exchange's System, some Members choose instead to simply cross-connect their existing trading hardware from the space near another Trading Center's system to the Exchange's System. In such cases, the company that owns the data center charges the Exchange a monthly cross-connection fee. Pursuant to the proposed rule the Exchange will pass this cross connection fee on, in full, to the applicable Member.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the

⁸ 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).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(7).

¹¹ See Notice for a more detailed description of the matter.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

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 The term "System" is defined in BATS Rule 1.5(aa).

⁶ The term "Trading Center" is defined in BATS Rule 2.11.

rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that in the current, competitive market environment, market participants can connect to numerous competing venues in numerous different ways, and that the Exchange currently does not charge any direct fees for connecting to the Exchange. In addition, the fees applied through the proposed rule will not result in any direct revenue for the Exchange, but rather, are a pass-through of fees charged to the Exchange as a result of certain Member's connections to the Exchange.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the 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 Number SR-BATS-2009-023 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-BATS-2009-023. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-BATS-2009-023 and should be submitted on or before August 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60315; File No. SR-MSRB-2009-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

July 15, 2009.

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 July 14, 2009, the Municipal Securities Rulemaking Board ("MSRB") 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 MSRB. 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 MSRB has filed with the Commission a proposed rule change to amend the primary market and continuing disclosure services of the Electronic Municipal Market Access system ("EMMA") to permit issuers and their designated agents to submit preliminary official statements and other related pre-sale documents, official statements and advance refunding documents, as well as information relating to the preparation and submission of audited financial statements and annual financial information and links to other disclosure information. The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be

⁷ 15 U.S.C. 78f.

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).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.