

the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>17</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>18</sup>

In particular, the Commission finds that the proposed rule change is consistent with the Act because it would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to primary market disclosure documents and transaction price information for the municipal securities market through EMMA. The proposed rule change would provide greater access to primary market disclosure documents and transaction price information about municipal securities information to all participants in the municipal securities market on an equal basis, thereby removing potential barriers to obtaining such information, and will allow the municipal securities industry to produce more accurate trade reporting and transparency. Broad access to primary market disclosure documents and price transparency information through the EMMA portal should also assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade. Furthermore, free public access to disclosure and transaction price information should promote a more fair and efficient municipal securities

market in which transactions are effected on the basis of material information available to all parties to such transactions, and thereby allow for fairer pricing of transactions. In addition, the electronic dissemination of primary market disclosure documents should enable issuers to reduce their issuance costs by eliminating the need to print and to distribute in paper official statements in connection with their primary offerings, thereby resulting in lower costs to issuers and savings to their citizens, lower expenses for underwriters, and potentially lower prices for investors. All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-MSRB-2009-02), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59962; File No. SR-FINRA-2009-020]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

May 21, 2009.

#### I. Introduction

On March 27, 2009, 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 amend the By-Laws of FINRA Regulation, Inc. ("FINRA Regulation") to modify the composition of the board of directors of FINRA Regulation ("FINRA Regulation Board"), to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-

Laws, and to make various non-substantive or conforming changes. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

On July 30, 2007, NASD and New York Stock Exchange Regulation, Inc. ("NYSE Regulation"), the regulatory subsidiary of the New York Stock Exchange, consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the Commission approved amendments to the NASD By-Laws to implement governance and related changes.<sup>4</sup> The approved changes included a FINRA Board governance structure that balanced public and industry representation. FINRA Regulation (formerly known as NASD Regulation, Inc. ("NASD Regulation")) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws.

The proposed rule change would modify the FINRA Regulation By-Laws to parallel more closely the composition and governance structure of the FINRA board of directors ("FINRA Board"). In addition, the proposed rule change would modify the FINRA Regulation By-Laws to reflect current business and legal practices concerning the administration and capital stock of FINRA Regulation. Furthermore, the proposed rule change would make non-substantive or conforming changes, including updating the FINRA Regulation By-Laws to reflect the corporate name change. A more detailed description of the proposed rule change is provided in the Notice.<sup>5</sup> The Commission discusses below the most significant aspects of the proposed changes to the FINRA Regulation By-Laws.

<sup>3</sup> See Securities Exchange Act Release No. 59696 (April 2, 2009), 74 FR 16020 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR-NASD-2007-023) ("Consolidation Approval Order").

<sup>5</sup> See *supra* note 3.

<sup>17</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>18</sup> *Id.* In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

### III. Discussion and Commission's Findings

After careful review of 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(4) of the Act,<sup>7</sup> which requires that FINRA rules be designed to assure a fair representation of FINRA's members in the selection of its directors and the administration of its affairs.

The FINRA By-Laws provide that the FINRA Board currently must consist of the Chief Executive Officer of FINRA, the Chief Executive Officer of NYSE Regulation, eleven Public Governors and ten Industry Governors, including a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor, an Investment Company Affiliate Governor, three Small Firm Governors, one Mid-Size Firm Governor, and three Large-Firm Governors.<sup>8</sup> The Small Firm Governors, Mid-Size Firm Governor, and Large-Firm Governors are elected by members of FINRA according to their classification as a Small Firm, Mid-Size Firm or Large Firm.<sup>9</sup>

The proposed rule change would provide that the FINRA Regulation Board continue to consist of between 5 and 15 members,<sup>10</sup> and that FINRA Regulation Board members be elected by, and drawn exclusively from, the FINRA Board. Additionally, the proposed rule change would require that the FINRA Regulation Board, like the FINRA Board, have a greater number of Public Directors than Industry Directors.<sup>11</sup> In addition, to ensure fair representation on the FINRA Regulation Board, the proposed rule change also would require that at least two, and not less than 20%, of the Directors of the FINRA Regulation Board be Small, Mid-Size, or Large Firm Governors.<sup>12</sup> The Commission notes that it previously

found the composition of the FINRA Board to be consistent with the fair representation requirement of Section 15A(b)(4) of the Act.<sup>13</sup> The Commission further notes that it has previously found a requirement that at least 20% of directors represent the exchange's members to be consistent with the fair representation requirement applicable to national securities exchanges under Section 6(b)(3) of the Act.<sup>14</sup> Accordingly, the Commission believes that the requirement that the FINRA Regulation Board be composed of at least two, and not less than 20%, of FINRA Regulation's Directors be Small Firm, Mid-Size Firm or Large-Firm Governors is consistent with Section 15A(b)(4) of the Act.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>15</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. The Commission believes that the proposed changes to the FINRA Regulation By-Laws should allow the FINRA Regulation Board to operate in a more effective and efficient manner by, among other things, having a similar composition and a complementary governance structure to the FINRA Board.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-FINRA-2009-020) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59967; File No. SR-BATS-2009-015]

#### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled "Order Execution"

May 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2009, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 is proposing to amend BATS Rule 11.13, entitled "Order Execution," to provide Users<sup>5</sup> of the Exchange with another option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange and is posted to the BATS Book after being routed away to one or more away Trading Centers<sup>6</sup> for execution.

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

<sup>6</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>7</sup> 15 U.S.C. 78o-3(b)(4).

<sup>8</sup> See FINRA By-Laws, Article VII, Section 4 and XXII, Section 2(a).

<sup>9</sup> See FINRA By-Laws, Article I(z), Article I(dd), Article I(xx) (defining Small Firm Governor, Mid-Size Firm Governor, and Large-Firm Governor), and Article VII, Section 4(a).

<sup>10</sup> See proposed FINRA Regulation By-Laws, Article IV, Section 4.2 (Number of Directors).

<sup>11</sup> See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).

<sup>12</sup> See *id.*

<sup>13</sup> See Consolidation Approval Order, *supra* note 4.

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936, 46941 (August 12, 2008) (SR-BSE-2008-02, SR-BSE-2008-23, SR-BSE-2008-25, SR-BSECC-2008-01).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> As defined in BATS Rule 1.5(bb).

<sup>6</sup> As defined in BATS Rule 2.11.