

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74160; File No. SR-BATS-2015-05)

January 28, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Chapter IX of its Rulebook to Incorporate Certain Rules of NASDAQ and FINRA Relating to Arbitration and Mediation

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 January 14, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 filed a proposal to amend Chapter IX of its rulebook to incorporate certain rules of the NASDAQ Stock Market LLC (“NASDAQ”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) relating to arbitration and mediation. The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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

On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD"), the Exchange, and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a plan to allocate to FINRA certain regulatory responsibilities for common rules and common members ("17d-2 Agreement").⁵ The 17d-2 Agreement was entered into in accordance with the requirements of Rule 17d-2 promulgated pursuant to the Act,⁶ which permits self-regulatory organizations ("SROs") to allocate certain regulatory responsibilities with respect to common members and common rules. On September 5, 2012, the Exchange and FINRA entered into a Regulatory Services Agreement ("RSA"), whereby FINRA was retained to perform certain regulatory services on behalf of the Exchange pertaining to dispute resolution. On February 1, 2014, the Exchange and FINRA terminated their 2012 RSA and entered into a new RSA that covers the services contained in the 2012 RSA

⁵ See Securities Exchange Act Release No. 56148 (Jul. 26, 2007), 72 FR 42146 (Aug. 1, 2007) (File No. 4-544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

⁶ 17 CFR 240.17d-2.

plus additional regulatory services. Today, FINRA performs all arbitration, mediation, and other dispute resolution services, as may be needed from time to time, on behalf of the Exchange.

To facilitate FINRA's performance of these functions under the 2014 RSA and to further harmonize the rules of FINRA and the Exchange generally, the Exchange is proposing to conform the text of its rules governing arbitration and mediation (Chapter IX) to the FINRA Code of Arbitration Procedure for Customer Disputes (12000 Series), FINRA Code of Arbitration Procedure for Industry Disputes (13000 Series), and the FINRA Code of Mediation (14000 Series).

The Exchange proposes to amend Chapter IX (Arbitration) of its rulebook to incorporate certain rules of NASDAQ and FINRA relating to arbitration and mediation, and to make certain non-substantive changes. The Exchange proposes to make the following changes to its current rules in Chapter IX of its rulebook.

Proposed Amendments to Current Rules

The Exchange proposes to amend current Rule 9.1 (Code of Arbitration) to make the rule substantially similar to NASDAQ Rule 10100. The Exchange proposes to replace the reference to NASD Code of Arbitration with FINRA Code of Arbitration,⁷ clarify the meaning of "Exchange arbitrations,"⁸ and add a sentence stating that Members must comply with FINRA arbitration rules as if they were rules of the Exchange.

The Exchange proposes to replace current Rule 9.2 (Jurisdiction) with amended Rule 9.2

⁷ See FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes) and FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes).

⁸ They would be defined as "every claim, dispute or controversy arising out of or in connection with matters eligible for submission under Rule 9.2."

(Matters Eligible for Submission), which is substantially similar to NASDAQ Rule 10101.⁹

Amended Rule 9.2 would state that the Exchange adopts the FINRA Code of Arbitration for any dispute, claim, or controversy arising out of or in connection with the business of any Member, or arising out of the employment or termination of employment of associated person(s) with any Member: between or among Members; between or among Members and associated persons; and between or among Members or associated persons and public customers, or others, except for any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Code of Procedure.

The Exchange proposes to amend current Rule 9.3 (Predispute Arbitration Agreements) to incorporate FINRA Rule 2268 by reference, instead of restating the predispute arbitration agreement rules in full.

The Exchange proposes to amend current Rule 9.5 (Payment of Awards), to re-name its title as “Failure to Act under Provisions of FINRA Code of Arbitration,” to expand the rule to include additional conduct deemed inconsistent with just and equitable principles of trade and a violation of Rule 3.1 (Business Conduct of Members), using the language of NASDAQ IM-10100, and FINRA IM-12000 and IM-13000. These prohibited acts include: failure to submit a dispute for arbitration under the FINRA Code of Arbitration as required by the FINRA Code of Arbitration; failure to comply with any injunctive order issued pursuant to the FINRA Code of Arbitration; failure to appear or to produce any document in his or her or its possession or control as directed pursuant to provisions of the FINRA Code of Arbitration; failure to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition under the FINRA Code of Arbitration where timely

⁹ See also FINRA Rule 12000 Series, FINRA Rule 13000 Series.

motion has not been made to vacate or modify such award pursuant to applicable law; or, failure to comply with a written and executed agreement obtained in connection with a mediation submitted for disposition pursuant to the FINRA Code of Mediation.¹⁰ The Exchange proposed to add Rule 9.5(b) to provide that action by Members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the FINRA Code of Arbitration is a violation of Exchange Rule 3.1.

The Exchange proposes to amend current Rule 9.6 to extend the application of the rule (currently applicable to arbitration) to mediation.

The Exchange proposes to add proposed Rule 9.7 (Mediation) to state that FINRA's mediation services, as governed by the 14000 Series of FINRA's Manual (the Code of Mediation Procedure), are also available to Members who voluntarily agree to submit matters for mediation. The Exchange also proposes to incorporate by reference the FINRA Code of Mediation into its rules so that Members have the same obligations with which to comply as if such rules and interpretations were part of the Exchange's rules.

The Exchange proposes to add Rule 9.8 (Regulatory Services Agreement) to state, among other things, that FINRA staff will perform arbitrations and mediations on behalf of the Exchange pursuant to an RSA with FINRA in accordance with the FINRA Codes of Arbitration and Mediation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in

¹⁰ See FINRA Rule 14000 Series (Code of Mediation Procedure).

¹¹ 15 U.S.C. 78f(b).

that it is 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 facilitating transactions in securities, and 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.

In particular, the Exchange believes that the proposed rule change will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for members of both the Exchange and FINRA (“dual members”). As previously noted, in many instances the proposed rule text is substantially similar to FINRA’s and NASDAQ’s respective rule texts, which have already been approved by the Commission. As such, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for arbitration and mediation matters, resulting in less burdensome and more efficient regulatory compliance for dual members and facilitating FINRA’s performance of its regulatory functions under the 2014 RSA.

¹² 15 U.S.C. 78f(b)(5).

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 written comments on the proposal.

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

The Commission believes that because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 C.F.R. 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a SRO to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. See 17 CFR 240.19b-4(f)(6)(iii).

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-BATS-2015-05 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2015-05. 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 website (<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 website 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 10:00 am and 3:00 pm. 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-BATS-2015-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

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Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).