

added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: February 25, 2010.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2010-4333 Filed 2-26-10; 11:15 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

**U.S. Biomedical Corp., (f/k/a United Textiles & Toys, Inc.), U.S. Environmental Solutions, Inc. (n/k/a EnviroResolutions, Inc.), USA Bridge Construction of N.Y., Inc., USA Broadband, Inc., USA Uranium Corp., and Utopia Marketing, Inc. (n/k/a Daytonabrands, Inc.); Order of Suspension of Trading**

February 26, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Biomedical Corp. (f/k/a United Textiles & Toys, Inc.) because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Environmental Solutions, Inc. (n/k/a EnviroResolutions, Inc.) because it has not filed any periodic reports since the period ended March 31, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Bridge Construction of N.Y., Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Broadband, Inc. because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Uranium Corp. because it has not filed any periodic reports since the period ended February 29, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Utopia Marketing, Inc. (n/k/a Daytonabrands,

Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 26, 2010, through 11:59 p.m. EST on March 11, 2010.

By the Commission.

**Jill M. Peterson,**

Assistant Secretary.

[FR Doc. 2010-4375 Filed 2-26-10; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61574; File No. SR-BATS-2010-003]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend BATS Rule 5.5, Entitled "Information Barrier Procedures," and To Add New BATS Rule 12.13, Entitled "Trading Ahead of Research Reports"**

February 23, 2010.

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 is hereby given that on February 11, 2010, 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 BATS. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange is proposing to amend BATS Rule 5.5, entitled "Information Barrier Procedures," to modify the Exchange's rule regarding information barrier procedures required of certain Exchange Members. The Exchange is also proposing to add new Exchange Rule 12.13, entitled "Trading Ahead of Research Reports."

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

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

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 III 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 eliminate the requirements of BATS Rule 5.5 that require a Member<sup>3</sup> that trades for its own account or that has a specialist or market maker operation on another market (defined in BATS Rule 5.5(a) as a "specialist") to establish and maintain certain specifically prescribed information barrier procedures and to file such procedures with the Exchange. At the same time, the Exchange proposes to amend BATS Rule 5.5 to more closely mirror the rules of other self-regulatory organizations that create certain obligations for all Member firms related to the prevention of the misuse of material, non-public information. Finally, the Exchange proposes to add new BATS Rule 12.13, which: (i) Prohibits Members from trading ahead of research reports, and (ii) requires each Member to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel.

#### (i) All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

Presently, the Exchange requires that each Member establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of

<sup>3</sup> See BATS Rule 1.5(n).

procedures, substantive supervision of interdepartmental communications by the Member's compliance department and procedures concerning proprietary trading when the firm is in possession of material, non-public information.<sup>4</sup> The Exchange also has specific rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, the Exchange prohibits a Member from trading ahead of its customer's limit orders.<sup>5</sup>

(ii) Proposed Amendments to General Standards and Deletion of Specific Information Barrier Procedures

As noted above, the Exchange currently maintains a general standard for all Members to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, including certain specific procedures. The Exchange also currently requires specific information barrier procedures for Members that meet the definition in BATS Rule 5.5(a) of a "specialist" and requires such firms to file their information barrier procedures with the Exchange. The Exchange proposes amending the language that imposes the general standard of preventing the misuse of material, non-public information and adding additional language to provide clarity regarding the minimum policies and procedures a Member must implement to comply with such general standards. As described in further detail below, the Exchange also proposes deleting the specific information barrier procedures required to be maintained by Exchange Members that meet the definition of "specialist."

Under the proposal, amended BATS Rule 5.5 would provide flexibility to a BATS Member to develop and maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate to that Member. The Exchange proposes adding Interpretation and Policy .01 to BATS Rule 5.5 that would provide examples of conduct that would constitute the misuse of material, non-public information.<sup>6</sup> Proposed Interpretation

<sup>4</sup> See BATS Rule 5.5(a).

<sup>5</sup> See BATS Rule 12.6.

<sup>6</sup> Such examples include: (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or (b) Trading in a security or related options or other derivative securities, while in possession of

and Policy .02 to BATS Rule 5.5 would set forth specific policies and procedures that would be required of Members.<sup>7</sup> However, as made clear by the proposed Interpretation and Policy, such policies and procedures would not in all cases, satisfy the requirements and intent of amended BATS Rule 5.5; the adequacy of each Member's policies and procedures would depend upon the nature of such Member's business.

The Exchange proposes to eliminate, in their entirety, the requirements set forth in BATS Rule 5.5 that require certain members to maintain and file with the Exchange specifically prescribed information barrier procedures. This proposal is consistent with the change recently approved by the Commission for NYSE Arca Equities, Inc. ("NYSE Arca"), which allowed the elimination of a specific information barrier requirement previously contained in NYSE Arca rules.<sup>8</sup> This proposal is also consistent with the approach currently employed by the Nasdaq Stock Market, L.L.C. ("Nasdaq"), which does not generally require its members to establish or maintain information barriers.

If the deletion of the requirement to maintain and file with the Exchange certain prescribed information barrier procedures is approved, the only specific information barrier requirement

material non-public information concerning imminent transactions in the security or related securities; or (c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

<sup>7</sup> The specific policies and procedures required, at a minimum, would include: (a) All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and (b) All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and (c) Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: Has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and (d) All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

<sup>8</sup> Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78).

of the Exchange will be the requirement described below, under proposed Rule 12.13, to maintain policies and procedures reasonably designed to restrict or limit the information flow between those with knowledge of the content or timing of a research report and trading department personnel. However, the Exchange does not intend to indicate that information barriers may not be necessary for Members in other contexts. To the contrary, information barrier procedures may be a necessary or effective means to manage conflicts of interest or to prevent communications of material non-public information between certain individuals or groups.<sup>9</sup> Further, as described above, under proposed Interpretation and Policy .02, the adequacy of each Member's policies and procedures will depend upon the nature of each Member's business.

(iii) Proposed Addition of BATS Rule 12.13

In an attempt to achieve additional consistency with certain other market centers, the Exchange further proposes to add new BATS Rule 12.13, prohibiting Members from establishing, increasing, decreasing or liquidating an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Similar to FINRA Rule 5280 and NYSE Arca Rule 6.7, the Exchange also proposes to require Members to establish, maintain and enforce procedures reasonably designed to restrict or limit the information flow

<sup>9</sup> The Exchange represents that it will issue a Regulatory Circular to its Members notifying such Members of this proposal and addressing related regulatory topics. For instance, the Regulatory Circular will reinforce the requirement that Members of the Exchange maintain policies and procedures that are reasonably designed to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder and the Exchange's rules, including those relating to the misuse of material non-public information. In addition, the Exchange represents that the Regulatory Circular will include the following guidance: "Pursuant to the proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. While information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules."

between research department personnel and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.

(iv) Members Retain Responsibility for Compliance

By prohibiting the misuse of material, non-public information, the Exchange believes it has appropriately defined the behavior that its participants must avoid. However, the Exchange also believes that prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (e.g., BATS Rule 12.6) the Exchange has placed its participants on notice as to their specific compliance burdens with respect to preventing the misuse of material, non-public information. Further, BATS Rule 5.1 requires each Member to establish, maintain and enforce written procedures that enable such Member to supervise the activities of associated persons of the Member and to assure their compliance with applicable securities laws and regulations, and with BATS Rules. Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving a similar proposal by NYSE Arca, the Commission stated that, “while information barriers are not specifically required under the proposal, a [firm’s] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”<sup>10</sup>

(v) Comparison to Framework Employed by Nasdaq and NYSE Arca

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that

clearly identifies prohibited conduct (e.g., misuse of material, non-public information) without further requiring Members to establish and maintain specific compliance mechanisms (e.g., information barriers). For example, Nasdaq prohibits the misuse of material, non-public information but does not generally require that its members establish and maintain information barriers,<sup>11</sup> and NYSE Arca recently eliminated a requirement applicable to NYSE Arca market makers specifically requiring information barriers. In conjunction with such amendment, NYSE Arca adopted NYSE Arca Rule 6.7, a rule that the Exchange has mirrored with its proposal of BATS Rule 12.13. Finally, similar to BATS Rule 5.1, Nasdaq Rule 3010 and NYSE Arca Rule 6.18 require the members of Nasdaq and NYSE Arca, respectively, to establish and maintain systems to supervise the activities of associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and the applicable rules of the exchange.

The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca’s respective structures. First, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Second, BATS has similar requirements to Nasdaq and NYSE Arca concerning the maintenance of a supervisory system and written supervisory procedures. The Exchange notes that FINRA and BATS have previously acknowledged, pursuant to the provisions of Rule 17d-2 under the Securities Exchange Act of 1934 (“17d-2 Agreement”), that, collectively, BATS Rules 5.1, 5.2, 5.3 and 5.4 are substantially similar to FINRA’s NASD Rule 3010, which Nasdaq and NYSE Arca rules incorporate by reference. For instance, BATS Rule 5.4 is similar to Rule 3010(c), which requires each FINRA member to conduct an annual review of the businesses in which it engages and to conduct annual office inspections including the “periodic examination of customer accounts to detect and prevent irregularities or abuses.” Although the Exchange has not incorporated Rule 3010(c) into its Rules by reference, Rule 3010(c) would apply to all broker-dealers that engage in a

customer business, because such firms are required to be members of FINRA.<sup>12</sup> Also, although not as detailed as Rule 3010(c) with respect to the requirements of the inspection, BATS Rule 5.4 is nearly identical in that it requires BATS Members to “review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.”

Based on the foregoing, it is appropriate for the Exchange to establish a similar approach with respect to information barriers employed by Nasdaq and NYSE Arca.<sup>13</sup>

(vi) Conclusion: Flexibility and Accountability

Eliminating substantial portions of BATS Rule 5.5, and adding to the general standards set forth therein to prohibit the misuse of material, non-public information, as proposed by this filing, offers Exchange participants both certainty and flexibility. BATS Members are on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Like Nasdaq and NYSE Arca participants, BATS Members will now be afforded the same flexibility to maintain compliance mechanisms of their own design. The Exchange believes that this approach fosters a fair and orderly marketplace without being overly burdensome upon its Members.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>14</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Eliminating portions of BATS Rule 5.5 that prescribe specific procedures and information barriers that must be maintained by certain Member firms,

<sup>12</sup> See 15 U.S.C. 78o(b)(8); see also 17 CFR 240.15b9-1(a).

<sup>13</sup> BATS notes that its current examination procedure regarding its review for appropriate supervisory systems and procedures will remain in place.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275 (September 8, 2009) (SR-NYSEArca-2009-78).

<sup>11</sup> See Nasdaq Rules 2110-2, 2110-3, and 2110-4.

while establishing more clarity regarding the minimum procedures that must be maintained by any Member, consistent with other self-regulatory organizations, should eliminate unnecessary regulatory burdens while at the same time retaining an appropriate mechanism designed to ensure that material, non-public information continues to be protected. In particular, the proposed rule change will reduce the burdens on certain Members that are currently required to maintain, and file with the Exchange, specified information barriers. The Exchange believes that the proposed changes will make compliance obligations with respect to prevention of the misuse of material, non-public information more clear to Exchange Members. The amended rule structure will be more consistent with that of other exchanges and will nonetheless continue to ensure protection of investors through existing regulations relevant to misuse of material, non-public information that apply to Exchange Members through the applicability and enforcement of relevant provisions of the Act, including Section 15(f);<sup>16</sup> rules imposed by other self-regulatory organizations; a joint industry effort to surveil for potential insider trading violations through a Rule 17d-2 Agreement<sup>17</sup> and Regulatory Services Agreements between all self-regulatory organizations that trade equity securities; and through the Exchange's examination program.

#### *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*

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

### **III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2010-003 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BATS-2010-003. 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 Web site 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 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 publicly available. All submissions should refer to File Number SR-BATS-2010-003 and should be submitted on or before March 23, 2010.

### **IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, 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 exchange.<sup>18</sup> The

Commission believes that the proposal is consistent with Section 6(b)(5)<sup>19</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Exchange is proposing to amend BATS Rule 5.5 to replace the specifically prescribed information barrier requirement with a more principles-based approach that would permit a Member to develop and apply its own policies and procedures to, among other things, prohibit the misuse of material nonpublic information. BATS Rule 5.5 addresses concerns arising from the potential for the sharing of material non-public information between a Member's market making activities and other business activities of the Member or its affiliates. For instance, one such concern is that the Member or affiliate engaging in other business activities might use non-public information that was acquired by the Member through its role as a market maker. Another concern is that the Member might use material non-public information received from the entity engaging in other business activities, such as trading based on a change in the firm's buy or sell recommendation.<sup>20</sup>

While amended BATS Rule 5.5 will no longer specify policies and procedures a Member must establish, the proposal will require that the policies and procedures be reasonably designed to ensure compliance with applicable Federal securities law and regulations, and with Exchange rules. The Commission believes that, with adequate oversight by the Exchange of its members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of BATS rules requiring Members to establish and maintain systems to supervise the activities of Members, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information.

Specifically, amended BATS Rule 5.5 will require Members to establish,

<sup>16</sup> 15 U.S.C. 78o(f).

<sup>17</sup> See Securities Exchange Act Release 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008).

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

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR-NYSE-2008-45) (articulating concerns in the context of approving changes to NYSE Rule 98).

maintain and enforce written procedures reasonably designed to prevent the misuse of material non-public information by the Member or persons associated with the Member. The misuse of material non-public information includes trading in a security or related securities or options or other derivative securities, while in possession of material non-public information concerning the issuer, or while in possession of material non-public information concerning imminent transactions in the security or related securities.<sup>21</sup> The Exchange also proposes to add BATS Rule 12.13, which will prohibit a Member from establishing, increasing, decreasing or liquidating an inventory position in a security or derivative of that security based on advance non-public knowledge of the content or timing of a research report concerning that security.

Further, BATS Rules 5.1, 5.2, 5.3 and 5.4, which relate to a Member's responsibilities or obligations related to conduct or supervision, will continue to apply. For example, BATS Rule 5.1 requires BATS Members to "establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules." In addition, BATS Rule 5.4 requires BATS Members to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses." These rules thus provide additional clarification that the supervisory systems and internal inspections of Members must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable BATS rules, including those relating to the misuse of material non-public information.

Pursuant to this proposal rule change, Members may utilize the flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations,

<sup>21</sup> See BATS Rule 5.5, Commentary .01.

and with applicable Exchange rules. In addition, the Commission notes that, while information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. In this regard, the Exchange included in Interpretation and Policy .02 to amended BATS Rule 5.5 a statement that the adequacy of each Member's policies and procedures relating to the misuse of material non-public information will depend upon the nature of such Member's business.

The Commission believes that the regulatory approach in this proposed rule change is substantially similar to the regulatory approach of Nasdaq and NYSE Arca. In particular, the BATS approach, like the Nasdaq and NYSE Arca approach, (i) enumerates the conduct that is prohibited by its members, including the potential misuse of material non-public information and (ii) provides for the policies and procedures that must be reasonably designed to ensure compliance with the same. In addition, the Commission notes that the Exchange has represented that its current examination procedure for the review of appropriate supervisory systems and procedures will remain in place.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Although this proposed rule change does not require that Members maintain specifically-prescribed information barriers, it will continue to mandate that Members establish and maintain a set of policies and procedures reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. As such, the Exchange is adopting an approach that is substantially similar to the approach currently employed by Nasdaq and NYSE Arca.<sup>23</sup>

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4, and Rule 3010); 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78).

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-BATS-2010-003) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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

[FR Doc. 2010-4230 Filed 3-1-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61575; File No. SR-FINRA-2010-007]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the By-Laws of NASD Dispute Resolution

February 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that 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") on January 22, 2010, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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 is proposing to amend the By-Laws of NASD Dispute Resolution.<sup>3</sup>

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of 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

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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> If this proposed rule change is approved by the Commission, the By-Laws of NASD Dispute Resolution will be redesignated as the "By-Laws of FINRA Dispute Resolution."