

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-CBOE-2011-005 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-CBOE-2011-005. 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 the CBOE. 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-CBOE-2011-005 and should be submitted on or before February 22, 2011.

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

**Elizabeth M. Murphy,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63764; File No. SR-MSRB-2010-17]**

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Amendments to Rule A-3, on Membership on the Board**

January 25, 2011.

#### **I. Introduction**

On November 30, 2010, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule consisting of amendments to Rule A-3, on membership on the Board, in order to establish a Nominating Committee in compliance with MSRB transitional Rule A-3(i). The proposed rule change was published for comment in the **Federal Register** on December 17, 2010.<sup>3</sup> The Commission received no comment letters about the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The purpose of the proposed rule change is to make changes to MSRB Rule A-3(c) as are necessary and appropriate prior to the creation of the Nominating Committee of the MSRB.

On September 30, 2010, the SEC approved MSRB Rule A-3(i), a transitional rule for MSRB fiscal year 2011 intended to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection

Act, Public Law 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").<sup>5</sup> The transitional rule provides that on or after October 1, 2010, and prior to the formation of the Nominating Committee for purposes of nominating Board members for fiscal year 2012, the Board will amend the provisions of Rule A-3(c) to (a) reflect the composition of the Board as provided under the Dodd-Frank Act, (b) assure that the Nominating Committee will be composed of a majority of public members and will have fair representation of broker-dealers, bank dealers, and municipal advisors, and (c) reflect such other considerations consistent with the provisions of Section 15B of the Exchange Act and the Dodd-Frank Act as the Board deems appropriate. The proposed rule change is intended to amend Rule A-3(c) to comply with the requirements of transitional Rule A-3(i), as approved by the SEC.

Consistent with Rule A-3(i), the Nominating Committee (hereinafter, "Nominating and Governance Committee") would consist of eleven members, six of whom would be public members and five of whom would be industry members. The Chair of the Committee would be a public member. Establishing an eleven member committee would allow for fair representation of regulated entities by reserving five positions for brokers, dealers, municipal securities dealers and municipal advisors.

Each constituency identified in the Dodd-Frank Act would be guaranteed a minimum of one seat on the Nominating and Governance Committee but the level of each constituency would be capped to avoid overweighting of any one over the others. These ranges of membership are as follows:

- Six public members consisting of (a) at least one, but no more than three, representative of institutional or retail investors; (b) at least one, but no more than three, representative of municipal entities; (c) at least one, but no more than three, members of the public with knowledge of or experience in the municipal industry and not representative of investors or municipal entities;<sup>6</sup> and
- Five regulated members, consisting of (a) at least one, but no more than two, representative of broker-dealers; (b) at

<sup>19</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> See Securities Exchange Act Release No. 63533 (December 13, 2010), 75 FR 79061 (December 17, 2010) (the "Commission's Notice").

<sup>4</sup> On January 13, 2011, Commissioner Aguilar, along with Michael E. Coe, Counsel to the Commissioner, met with representatives of the National Association of Independent Public Finance Advisors to discuss the proposed rule change among other matters. See Memorandum from Michael E. Coe, dated January 13, 2011.

<sup>5</sup> See Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806 (October 6, 2010).

<sup>6</sup> In order to ensure balance on the committee and reflect the breadth of public representatives on the Board, the proposal would require one to three committee members be selected from Board members who are not representative of municipal entities or investors.

least one, but no more than two, representative of bank dealers; and (c) at least one, but no more than two, representative of non-dealer municipal advisors.

The Board believes this formulation is consistent with the Dodd-Frank Act and Rule A-3(i) in that it provides for a majority of public members on the Committee and fair representation of regulated entities. The MSRB also believes it is important that the Chair of the Nominating and Governance Committee be a public member, both as a governance best practice and in recognition of the majority of public members on the Board, as mandated by the Dodd-Frank Act.

A more complete description of the proposal is contained in the Commission's Notice.<sup>7</sup>

### III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(B) of the Exchange Act<sup>9</sup> and the rules and regulations thereunder. Section 15B(b)(2)(B) of the Exchange Act provides that the MSRB's rules shall:

Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.

The Commission believes that the proposed rule change is consistent with the Exchange Act as amended by the Dodd-Frank Act, in that it would provide for the creation of an MSRB Nominating and Governance Committee that reflects the composition of the Board as provided under the Dodd-Frank Act and would help assure that the Nominating and Governance Committee would be composed of a majority of public members and have fair representation of broker-dealers, bank dealers, and municipal advisors, consistent with MSRB Rule A-3(i) as approved by the SEC.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>10</sup> that the proposed rule change (SR-

MSRB-2010-17), be, and it hereby is, approved.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63766; File No. SR-BATS-2011-002]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Proposed Rule Change To Amend BATS Rules in Connection With the Implementation of Amendments to Regulation SHO

January 25, 2011.

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 January 14, 2011, 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 prepared by the Exchange. 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 filing with the Commission a proposal to amend BATS Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.<sup>3</sup>

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

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,<sup>4</sup> pursuant to which, among other things, short sale orders in covered securities<sup>5</sup> generally cannot be executed or displayed by a trading center<sup>6</sup> such as BATS at a price that is at or below the current national best bid ("NBB") when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").<sup>7</sup> In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange is proposing to amend certain BATS rules to describe the manner in which the System<sup>8</sup> will handle short

<sup>4</sup> See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. See Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

<sup>5</sup> Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

<sup>6</sup> Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

<sup>7</sup> 17 CFR 242.201(b)(1). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

<sup>8</sup> The "System" is defined in BATS Rule 1.5(aa) as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

<sup>7</sup> See *supra* note 3.

<sup>8</sup> 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>9</sup> 15 U.S.C. 78o-4(b)(2)(B).

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

<sup>11</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> 17 CFR 242.200(g); 17 CFR 242.201.