

fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide an improvement over the rebate applicable to the execution if such routed orders were executed directly by the Member at NASDAQ BX.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at NASDAQ BX through the TRIM routing strategy, the proposed fee change is designed to equal the rebate that a Member would have received if such routed orders would have been executed directly by a Member at NASDAQ BX.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</sup> 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2014-008 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 Number SR-BYX-2014-008. This file number should be included on the subject line if email 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 at 100 F Street NE., Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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 Number SR-BYX-2014-008, and should be submitted on or before June 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-11031 Filed 5-13-14; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-72129; File No. SR-MSRB-2014-01]

#### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Revisions to MSRB Rule G-30, on Prices and Commissions and the Deletion of Rule G-18, on Execution of Transactions**

May 8, 2014.

#### **I. Introduction**

On January 29, 2014, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "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 consisting of proposed revisions to MSRB Rule G-30, on prices and commissions and the deletion of Rule G-18, on execution of transactions. The proposed rule change was published for comment in the **Federal Register** on February 19, 2014.<sup>3</sup>

The Commission received two comment letters on the proposal.<sup>4</sup> On April 29, 2014, the MSRB submitted a response to these comments<sup>5</sup> and filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission is publishing

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

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

<sup>3</sup> Securities Exchange Act Release No. 71536 (February 12, 2014), 79 FR 9558.

<sup>4</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated March 12, 2014 (the "SIFMA Letter"); and Letter from Seth M. Yarmis, dated March 14, 2014 (the "Individual Investor Letter").

<sup>5</sup> See Letter to Secretary, Commission, from Michael L. Post, Deputy General Counsel, MSRB, dated April 29, 2014 (the "MSRB Response Letter"), available at <http://www.sec.gov/comments/sr-msrb-2014-01/msrb201401-4.pdf>.

<sup>6</sup> See Letter to Secretary, Commission, from Michael L. Post, Deputy General Counsel, MSRB, dated April 29, 2014 (the "MSRB Amendment Letter"), available at <http://www.sec.gov/comments/sr-msrb-2014-01/msrb201401-3.pdf>. In Amendment No. 1, the MSRB partially amended the text of the original proposed rule change to (i) revise Supplemental Material .05 of Rule G-30 to reference MSRB Rule G-48 (Transactions with Sophisticated Municipal Market Professionals) rather than MSRB Rule G-17; (ii) amend the text of MSRB Rule G-48(b) to reference MSRB Rule G-30 rather than Rule G-18; (iii) preserve rule number G-18 for possible future rulemaking; and (iv) insert a clarifying clause into Supplementary Material .02(b) of Rule G-30. The MSRB also requested that the proposed rule change be made effective 60 days after Commission approval.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change

The MSRB states that the purpose of the proposed rule change is to codify the substance of existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, “dealers”) and further streamline the MSRB’s Rule Book.<sup>7</sup> Fair-pricing provisions are currently organized in two separate rules, Rules G–18 and G–30, with interpretive guidance under Rule G–30 as well as under a third rule, Rule G–17, on fair dealing.<sup>8</sup>

According to the MSRB, the proposed rule change will achieve this purpose by consolidating Rules G–18 and G–30 into a single fair-pricing rule, and consolidating the existing interpretive guidance under Rules G–17 and G–30<sup>9</sup> and codifying that guidance in the same rule.<sup>10</sup> The MSRB states that it will archive the past interpretive guidance, current as of January 1, 2013, on its Web site.<sup>11</sup> The MSRB states that, to the extent that the past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.<sup>12</sup>

The MSRB believes the proposed rule change will significantly enhance

regulated entities’ ability to understand and comply with their fair-pricing obligations by organizing them together in a single location.<sup>13</sup> Further, the MSRB believes the relevant information from the existing interpretive guidance will be succinctly stated in the new rule.<sup>14</sup> The MSRB believes this could be particularly beneficial for new municipal market entrants, which would be in a position to focus, with respect to fair-pricing obligations, on the new, consolidated rule.<sup>15</sup> The MSRB states that the proposed rule change will ease burdens on dealers and reduce costs by clarifying dealer obligations.<sup>16</sup>

### 1. Proposed Changes to Rule G–30

Following is a summary of the provisions and the supplementary material comprising the proposed changes to Rule G–30:

#### Rule Language

Proposed revised Rule G–30(a) applies to principal transactions and states that a dealer can only purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.<sup>17</sup>

Proposed revised Rule G–30(b) applies to agency transactions. Subsection (i) states that when a dealer executes a transaction in municipal securities for or on behalf of a customer, the dealer must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.<sup>18</sup> Subsection (ii) states a dealer cannot purchase or sell municipal securities for a customer for a commission or service charge in excess of a fair and reasonable amount.<sup>19</sup>

#### Supplementary Material

Supplementary Material .01 specifies five general principles concerning the fair-pricing requirements: (a) That a dealer, whether effecting a trade on an agency or principal basis, must exercise diligence in establishing the market value of the security and the reasonableness of the compensation received on the transaction; (b) that a

dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account; (c) that a “fair and reasonable” price bears a reasonable relationship to the prevailing market price of the security; (d) that dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction;<sup>20</sup> and (e) that reasonable compensation differs from fair pricing.<sup>21</sup>

Supplementary Material .02 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of prices.<sup>22</sup>

Supplementary Material .03 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of commissions or service charges.<sup>23</sup> According to the MSRB, the proposed rule change makes it easier for market participants to find these relevant factors.

Supplementary Material .04 discusses the application of fair-pricing requirements to some of the situations that may create large intra-day price differentials.<sup>24</sup>

Supplementary Material .05 discusses the general duty under proposed revised Rule G–30(b)(i) of dealers operating alternative trading systems to act to investigate any alleged pricing

<sup>20</sup> This language was added to address comments the MSRB received in response to its August 6, 2013, request for comment on a draft of the proposed rule change.

<sup>21</sup> Supplementary Material .01 is derived from the 2004 Notice.

<sup>22</sup> Supplementary Material .02(a) is derived from the 2004 Notice. Supplementary Material.02(b) is derived from Rule G–30(a), the 2004 Notice, the *MSRB Interpretive Letter—Rule s G–21, G–30 and G–32* (Dec. 11, 2001), the *MSRB Interpretive Letter—Factors in Pricing* (Nov. 29, 1993), the *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); and the *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979).

<sup>23</sup> Supplementary Material .03 is derived from existing Rule G–30(b), the 2004 Notice and *Republication of September 1980, Report on Pricing* (Oct. 3, 1984). Supplementary Material .03(a)(viii) refers to Rule 2830 of the National Association of Securities Dealers, Inc. (“NASD”), which provides a sales charge schedule for registered investment company securities, and remains in effect in the Financial Industry Regulatory Authority, Inc. rulebook. The MSRB has stated it recognizes that, due to the limitations of Section 15B(b)(2)(C) of the Act, it could not, by rule or interpretation, “impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged” by dealers for the sale of municipal fund securities. The MSRB believes, however, that the charges permitted by FINRA under NASD Rule 2830 may, depending upon the totality of the facts and circumstances, be a significant factor in determining whether a dealer selling municipal fund securities is charging a commission or other fee that is fair and reasonable.

<sup>24</sup> Supplementary Material .04 is derived from the 2004 Notice.

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

<sup>8</sup> *Id.*

<sup>9</sup> The formal fair-pricing guidance under current Rule G–30 that is to be codified was not filed with the Commission, and is as follows: *Review of Dealer Pricing Responsibilities* (Jan. 26, 2004) (“2004 Notice”); *Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities* (Dec. 19, 2001); *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979); *Interpretive Letter—Rules G–21, G–30 and G–32* (Dec. 11, 2001); and *Factors in Pricing* (Nov. 29, 1993). The formal fair-pricing guidance under Rule G–17 that is to be codified that was not filed with the Commission is as follows: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009); *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (Sept. 20, 2010); and *Bond Insurance Ratings—Application of MSRB Rules* (Jan. 22, 2008). The formal guidance under Rule G–17 that is to be codified that was filed with the Commission is contained in *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012).

<sup>10</sup> See *supra* note 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Proposed revised Rule G–30(a) is substantially similar to the first clause of existing Rule G–30(a).

<sup>18</sup> Subsection (i) of proposed Rule G–30(b) is derived from current Rule G–18.

<sup>19</sup> Subsection (ii) of proposed Rule G–30(b) is derived from the first clause of existing Rule G–30(b).

irregularities on their systems brought to their attention, which duty applies equally to transactions effected for SMMPs.<sup>25</sup>

### III. Summary of Comments Received and the MSRB's Response

As noted previously, the Commission received two comment letters on the proposed rule change and a response letter from the MSRB.<sup>26</sup> The comment letters each raised specific concerns discussed in more detail below.

#### 1. SIFMA Letter

As noted above, the Commission received a comment letter from SIFMA on the proposed rule change. SIFMA is generally supportive of the proposed rule change.<sup>27</sup> At the same time, SIFMA expressed concerns about the timing of the proposed rule change and suggested that the MSRB modify the proposed rule change in some respects.<sup>28</sup>

On February 19, 2014, after the filing of the proposed rule change, the MSRB published a request for comment on a draft best-execution rule.<sup>29</sup> SIFMA stated that the proposed rule change and the draft best-execution rule should be viewed together because of the interplay and practical effects between best execution and fair pricing.<sup>30</sup> SIFMA requested that the SEC not move forward at this time to allow the MSRB to submit, and allow market participants to comment on, a single filing on dealer execution and fair pricing obligations.<sup>31</sup>

The MSRB responded that any potential interplay between a best-execution rule and fair-pricing rules would be unchanged by this non-substantive codification of the MSRB's existing fair-pricing requirements.<sup>32</sup> The MSRB noted that any concerns about interplay can and should be raised and addressed in the context of any future rulemaking process for the proposed best-execution rule, which would

involve substantive changes to dealers' existing obligations.<sup>33</sup> In addition, the MSRB stated that delaying the review of the proposed rule change would not provide the SEC with any additional information that would aid its review or serve any other beneficial purpose that cannot be adequately served in any future rulemaking process for a best-execution rule.<sup>34</sup> The MSRB noted that a delay, however, would prolong the MSRB Rule Book consolidation initiative designed to ease the burden on market participants who are seeking to understand, comply with, and enforce fair-pricing requirements.<sup>35</sup>

SIFMA stated that all factors discussed in existing MSRB interpretive guidance which may be relevant in making pricing determinations should be listed in Supplementary Material .02.<sup>36</sup> Specifically, SIFMA requested inclusion of the following factors: (i) Improved market conditions; and (ii) trading history, which could encompass such matters as the degree of market activity for the securities and the existence or non-existence of market-makers in the securities.<sup>37</sup> SIFMA noted that its members' experience with enforcement regulators is that a factor listed in the rule is given more weight than an equally relevant, or arguably more relevant, factor that is not contained in the rule.<sup>38</sup> SIFMA also requested that the first sentence of Supplementary Material .02(b) be amended as follows: "Other factors include (*but are not limited to*)" (SIFMA's proposed additional language underlined).<sup>39</sup>

The MSRB responded that the substance of the interpretive guidance is codified in the proposed amendments to Rule G–30.<sup>40</sup> The MSRB noted that Supplementary Material .02(a) encompasses the concept of "improved market conditions."<sup>41</sup> Specifically, Supplementary Material .02(a) refers to the "yield on other securities of comparable quality, maturity, coupon rate, and block size *then available in the market*" (emphasis added in MSRB Response Letter).<sup>42</sup> As a more general matter, the MSRB has agreed with SIFMA's suggestion to amend the first sentence of Supplementary Material .02(b) by inserting a clarifying clause (*i.e.*, "but are not limited to"), and has

filed Amendment No. 1 concurrently with the submission of its response.<sup>43</sup> The MSRB stated that the existing rules and interpretive guidance do not purport to exhaustively identify all relevant factors.<sup>44</sup> According to the MSRB, the list of factors in Supplementary Material .02(b) is (and was intended to be) non-exhaustive.<sup>45</sup> The MSRB further stated that SIFMA's suggested clarification is consistent with the substance of the existing rules and guidance.<sup>46</sup> Additionally, as the MSRB stated in the proposed rule change, the interpretive guidance that would be deleted from the MSRB Rule Book will be archived on the MSRB's Web site and, to the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.<sup>47</sup> The MSRB concluded that, on these grounds, the potential relevance of the "improved market conditions" and "trading history" factors, if the proposed rule change as amended were approved, would remain unchanged.<sup>48</sup>

SIFMA stated that improvements should be considered whenever rules are being reviewed, amended, or created.<sup>49</sup> SIFMA highlighted the extensive process required in rulemaking and noted that because rules are amended so infrequently, this is a lost opportunity especially in light of the MSRB's recent practice of including, within a rule itself, supplemental material that was historically issued in the form of interpretive guidance.<sup>50</sup>

The MSRB stated that not all rulemaking activity requires consideration of substantive changes and the MSRB has discretion to define the scope of its individual rulemaking initiatives.<sup>51</sup> The MSRB determined that the objective of this initiative was to codify, not substantively change, the existing fair-pricing requirements.<sup>52</sup> The MSRB noted that the limited purpose of the proposed rule change is to improve the ability to locate, understand and comply with fair-pricing standards.<sup>53</sup> The MSRB further stated that the request for comment, accordingly, apprised commenters of the limited

<sup>25</sup> Supplementary Material .05 is derived from interpretive guidance that was previously filed with the Commission and recently approved by the Commission to be generally codified in Rule G–48 based on its relevance to SMMPs. See *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012) and Securities Exchange Act Release No. 71655 (Mar. 7, 2014), 79 FR 14321 (Mar. 10, 2014). New MSRB Rule G–48 will become effective July 5, 2014.

<sup>26</sup> See *supra* notes 4 and 5.

<sup>27</sup> See SIFMA Letter at 1.

<sup>28</sup> See SIFMA Letter at 1, 3.

<sup>29</sup> See *Request for Comment on Draft Best-Execution Rule, Including Exception for Transactions with Sophisticated Municipal Market Professionals*, MSRB Notice 2014–02 (Feb. 19, 2014).

<sup>30</sup> See SIFMA Letter at 1, 3.

<sup>31</sup> *Id.*

<sup>32</sup> See MSRB Response Letter at 4.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See SIFMA Letter at 2.

<sup>37</sup> See SIFMA Letter at 2–3.

<sup>38</sup> See SIFMA Letter at 2.

<sup>39</sup> See SIFMA Letter at 3.

<sup>40</sup> See MSRB Response Letter at 2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See *supra* note 6.

<sup>44</sup> See MSRB Response Letter at 2.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See SIFMA Letter at 3.

<sup>50</sup> *Id.*

<sup>51</sup> See MSRB Response Letter at 3.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

scope of the initiative.<sup>54</sup> The MSRB also stated that, in another recent rulemaking initiative within the MSRB's same overall plan to streamline its Rule Book, the SEC approved the proposed rule change, which also had a limited scope.<sup>55</sup> In such proposed rule change, the SEC believed that the MSRB, through its response, addressed commenters' concerns, other than those the MSRB determined were outside the scope of the proposal.<sup>56</sup> The MSRB further stated that it values all comments that may be relevant to its statutory charge to improve its rules and the municipal securities market, and will take all of SIFMA's additional, substantive suggestions under advisement for future rulemaking initiatives.<sup>57</sup>

## 2. Individual Investor Letter

As noted above, the Commission received a comment letter from an individual investor on the proposed rule change. The individual investor expressed concerns about the pricing of municipal bonds by dealers and the mark-ups observed in municipal securities transactions.<sup>58</sup> The individual investor described the mark-ups as inappropriate and abusive.<sup>59</sup> The individual investor inquired about the possibility of establishing a centralized electronic trading platform for municipal securities.<sup>60</sup>

The MSRB stated that it appreciates input from individual investors and the commenter's letter touches on areas that the MSRB is monitoring.<sup>61</sup> The MSRB noted that these comments, however, are outside the scope of the current rulemaking initiative to streamline the Rule Book by non-substantively codifying existing fair-pricing standards.<sup>62</sup> The MSRB stated that it will take these comments under advisement for future rulemaking initiatives.<sup>63</sup>

## IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, as well as the two comment letters received and the MSRB's response. The Commission finds that the proposed rule change, as

amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall 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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.<sup>64</sup>

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because it protects investors by preserving the substance of the current requirement that dealers must exercise diligence in establishing the market value of a security and the reasonableness of the compensation received on a transaction. The Commission also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by easing burdens on dealers and clarifying existing dealer obligations.

In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.<sup>65</sup> The Commission believes that the proposed rule change includes accommodations that help promote efficiency and legal certainty. Specifically, the MSRB's retention of its interpretative guidance and the continuing applicability of such guidance to the extent it does not conflict with any MSRB rules or interpretations provide continuity to dealers. Furthermore, the Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change makes no substantive change to existing dealer obligations and, therefore, does not add any burden on competition. Moreover, the Commission believes that the proposed rule change will, by contrast, ease burdens on

dealers by clarifying existing dealer obligations.

As noted above, the Commission received two comment letters on the filing. While commenters suggested means to improve the filing or opposed certain aspects of the proposal, the Commission notes that no commenters argued that the proposed rule change was inconsistent with the applicable provisions of the Act.

For the reasons noted above, including those discussed in the MSRB Response Letter and MSRB Amendment Letter, the Commission believes that the proposed rule change, as amended by Amendment No. 1, is consistent with the Act.

## V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2014-01 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-MSRB-2014-01. This file number should be included on the subject line if email 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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See Exchange Act Release No. 71665 (Mar. 7, 2014), 79 FR 14321 (Mar. 13, 2014).

<sup>57</sup> See MSRB Response Letter at 4.

<sup>58</sup> See Individual Investor Letter.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See MSRB Response Letter at 4.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>65</sup> 15 U.S.C. 78c(f).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2014-01 and should be submitted on or before June 4, 2014.

## VI. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register. As discussed above, Amendment No. 1 amends the proposed rule change by: (i) Revising Supplemental Material .05 of Rule G-30 to reference MSRB Rule G-48 (Transactions with Sophisticated Municipal Market Professionals) rather than MSRB Rule G-17; (ii) amending the text of MSRB Rule G-48(b) to reference MSRB Rule G-30 rather than Rule G-18; (iii) preserving rule number G-18 for possible future rulemaking; and (iv) inserting a clarifying clause into Supplementary Material .02(b) of Rule G-30.<sup>66</sup> The MSRB also requested that the proposed rule change be made effective 60 days after Commission approval.<sup>67</sup>

The MSRB has proposed the revisions included in items (i) and (ii) because, since the filing of the proposed rule change, other amendments to MSRB rules are being implemented that will make these existing references in Rules G-30 and G-48 no longer accurate.<sup>68</sup> The MSRB has proposed item (iii) to preserve rule number G-18 for possible future rulemaking activities after its text is deleted by the proposed rule change.<sup>69</sup> The MSRB has proposed item (iv) to clarify that the list of fair-pricing factors in Supplementary Material .02(b) of Rule G-30 is a non-exhaustive list of factors.<sup>70</sup> Lastly, the MSRB requested that the proposed rule change be made effective 60 days after Commission approval because the original proposed rule change did not propose a specific effective date.

The Commission believes that Amendment No. 1 does not alter the

substance of the original proposed rule change and clarifies the original proposed rule change to more accurately reflect existing MSRB rules and interpretive guidance. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>71</sup> that the proposed rule change (SR-MSRB-2014-01), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.<sup>72</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72128; File No. SR-BATS-2014-017]

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

May 8, 2014.

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 April 28, 2014, 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. The Exchange 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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.

<sup>71</sup> 15 U.S.C. 78s(b)(2).

<sup>72</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)(ii).

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

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

Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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 its fee schedule applicable to use of the Exchange in order to: (i) Introduce "Step-Up Tiers" and a corresponding definition of "Step-Up Add TCV" on the Exchange's equities trading platform ("BATS Equities"); (ii) introduce a "Cross-Asset Step-Up Tier" and a corresponding definition of "Options Step-Up Add TCV" for the purposes of BATS Equities pricing; (iii) introduce a new tier for Customer<sup>6</sup> orders that add liquidity to the Exchange's options platform ("BATS Options") in options classes subject to the penny pilot program as described below ("Penny Pilot Securities")<sup>7</sup> and add a

<sup>5</sup> A Member is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

<sup>6</sup> As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC"), except for those designated as "Professional."

<sup>7</sup> The Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class.

<sup>66</sup> See MSRB Amendment Letter.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*