



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

[Add](#) [Remove](#) [View](#)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

[Add](#) [Remove](#) [View](#)

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

[Add](#) [Remove](#) [View](#)

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 13.3, entitled “Forwarding of Issuer Materials,” in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Exchange is also proposing changes to BATS Rule 13.3 in order to better align the Exchange’s rule with the rules of other self-regulatory organizations (“SROs”).

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

\* \* \* \* \*

CHAPTER XIII. MISCELLANEOUS PROVISIONS

\* \* \* \* \*

Rule 13.3. Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting

(a) \_\_\_\_\_ A Member when so requested by an issuer and upon being furnished with: (1) sufficient copies of proxy material, annual reports, information statements or other material required by law to be sent to [stockholders]security holders periodically, and (2) satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner of securities (or the beneficial owner’s designated investment adviser) of such issuer which are in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished. In the event of a proxy solicitation, such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for

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

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

completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A Member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. This paragraph shall not apply to beneficial owners residing outside of the United States of America though Members may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

(b) No Member shall give a proxy to vote stock that is registered in its name, unless: (i) such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following.

(c) Notwithstanding the foregoing, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(d) Notwithstanding the foregoing, a Member may give a proxy to vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. A Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of this Rule, shall obtain the requisite number of signed proxies from such holder of record. Notwithstanding the foregoing: (1) any Member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

#### *Interpretations and Policies*

.01 For purposes of this Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940, or registered as an investment adviser under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial

owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(a) For purposes of this Rule, the term “state” shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act (as the same may be amended from time to time).

(b) The written designation must be signed by the beneficial owner; be addressed to the Member; and include the name of the designated investment adviser.

(c) Members that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act, or with a state as an investment adviser under the laws of such state, and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(d) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the Member.

\* \* \* \* \*

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

Section 957 of the Dodd-Frank Act amends Section 6(b) of the Act<sup>3</sup> to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 of the Act<sup>4</sup> from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to add new paragraph (b) to BATS Rule 13.3 to prohibit a Member from giving a proxy to vote stock that is registered in its name, unless: (i) such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is

---

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

<sup>4</sup> 15 U.S.C. 78l.

also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

Notwithstanding the above, as proposed in new paragraph (c) to Rule 13.3, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

In order to promote consistency with FINRA Rule 2251, the Exchange also proposes to add language to the existing text of Rule 13.3 to state that for beneficial owners, the proxy materials or other materials to be forwarded on behalf of an issuer can be sent to the beneficial owner's designated investment adviser, if applicable. In conjunction with this change, the Exchange proposes to adopt the definition of "designated investment adviser" set forth in FINRA Rule 2251(f) as Interpretation and Policy .01 to Rule 13.3.

Similarly, the Exchange proposes to add new paragraph (d) to Rule 13.3, based entirely on FINRA Rule 2251(d), to explicitly state that a Member may give a proxy to

vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Proposed paragraph (d) will also state that a Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of Rule 13.3, shall obtain the requisite number of signed proxies from such holder of record. Lastly, proposed paragraph (d) also states that, notwithstanding the foregoing: (1) any Member designated by a named Employee Retirement Income Security Act of 1974 (as amended) (“ERISA”) Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

The Exchange also proposes modifying the text of Rule 13.3, which currently would require forwarding of proxy material but which does not explicitly reference such material, to add such an explicit reference. The Exchange further proposes to modify the text of Rule 13.3 to reference “security holders,” rather than stockholders, in the initial sentence, to ensure that the coverage of the rule applies to all securities, including debt securities to the extent applicable, and not just equity securities. The Exchange also proposes to incorporate certain language from FINRA Rule 2251 that provides additional detail regarding the material that must be provided to beneficial owners in the event of a proxy solicitation. Specifically, Rule 13.3 as amended will state that in the event of a

proxy solicitation, materials provided pursuant to the Rule shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. The Rule will also require a Member to furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. Finally, the Exchange proposes to modify the title of Rule 13.3 to include reference to proxy voting.

The Exchange believes that these additional changes to Rule 13.3 will help to avoid confusion by Members of the Exchange that are also members of FINRA by further aligning the Exchange's rules with FINRA Rule 2251. In addition, the Exchange notes that it is party to an agreement with FINRA pursuant to which certain regulatory responsibility to examine and enforce common rules of the Exchange and FINRA is allocated to FINRA pursuant to Rule 17d-2 under the Act (the "17d-2 Agreement").<sup>5</sup> The proposed changes to Rule 13.3 may be sufficient to incorporate Rule 13.3 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

(b) Statutory Basis

Approval of 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

---

<sup>5</sup> 17 CFR 240.17d-2.

national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> The Exchange believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)<sup>7</sup> requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule 13.3(c) to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that proposed Rule 13.3(b) is consistent with Section 6(b)(5) of the Act,<sup>9</sup> particularly with respect to removal of impediments to, and perfection the mechanism of, a free and open market and a national market system, because the proposed changes will provide for consistent regulation for Members of the

---

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(10).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

Exchange that are members of other SROs with analogous rules.<sup>10</sup> Moreover, the proposed changes to Rule 13.3(a), proposed Rule 13.3(d), and proposed Interpretation and Policy .01 are consistent with FINRA Rule 2251. Accordingly, the Exchange believes that the proposal fosters cooperation amongst SROs because to the extent the Exchange is able to incorporate Rule 13.3 into the 17d-2 Agreement as a rule in common between the Exchange and FINRA (a “Common Rule”), then FINRA will conduct a review for compliance with the Common Rule to the extent a Member of the Exchange is also a member of FINRA, and the Exchange will not conduct a duplicative review of the same activity by that Member.

Finally, the Exchange believes that the proposal will contribute to investor protection by defining important requirements to which Members must abide with respect to proxy solicitation, proxy voting and delivery of proxy materials.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

---

<sup>10</sup> See, e.g., FINRA Rule 2251, ISE Rule 421, NYSE Arca Rule 9.4, and Nasdaq Rule 2251.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that good cause for accelerated effectiveness of the proposed rule changes exists in light of the fact that the proposed rule text is based upon FINRA Rule 2251, as well as ISE Rule 421, NYSE Arca Rule 9.4, and Nasdaq Rule 2251, and thus, the proposed changes will provide for consistent regulation for Members of the Exchange that are also members of other SROs with analogous rules relating to proxies. Additionally, Section 957 of the Dodd-Frank Act does not provide for a transition phase, therefore, the Exchange respectfully requests immediate acceleration of the effectiveness of the proposed rule changes so that the Exchange's rules will be in compliance with the Dodd-Frank Act without delay.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

This proposed rule change is based on FINRA rule 2251, as well as ISE Rule 421, NYSE Arca rule 9.4, and Nasdaq rule 2251.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2011-036)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to amend BATS Rule 13.3 to Prohibit Members from Voting Uninstructed Shares on Certain Matters and to Align BATS Rule 13.3 with the Rules of other Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 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 proposing to amend BATS Rule 13.3, entitled “Forwarding of Issuer Materials,” in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Exchange is also proposing changes to BATS Rule 13.3 in order to better align the Exchange’s rule with the rules of other self-regulatory organizations (“SROs”).

The text of the proposed rule addition 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.

---

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

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

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

Section 957 of the Dodd-Frank Act amends Section 6(b) of the Act<sup>3</sup> to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 of the Act<sup>4</sup> from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to add new paragraph (b) to BATS Rule 13.3 to

---

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

<sup>4</sup> 15 U.S.C. 78l.

prohibit a Member from giving a proxy to vote stock that is registered in its name, unless:

(i) such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following.

The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

Notwithstanding the above, as proposed in new paragraph (c) to Rule 13.3, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

In order to promote consistency with FINRA Rule 2251, the Exchange also proposes to add language to the existing text of Rule 13.3 to state that for beneficial owners, the proxy materials or other materials to be forwarded on behalf of an issuer can be sent to the beneficial owner's designated investment adviser, if applicable. In conjunction with this change, the Exchange proposes to adopt the definition of "designated investment adviser" set forth in FINRA Rule 2251(f) as Interpretation and Policy .01 to Rule 13.3.

Similarly, the Exchange proposes to add new paragraph (d) to Rule 13.3, based entirely on FINRA Rule 2251(d), to explicitly state that a Member may give a proxy to vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Proposed paragraph (d) will also state that a Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of Rule 13.3, shall obtain the requisite number of signed proxies from such holder of record. Lastly, proposed paragraph (d) also states that, notwithstanding the foregoing: (1) any Member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

The Exchange also proposes modifying the text of Rule 13.3, which currently would require forwarding of proxy material but which does not explicitly reference such material, to add such an explicit reference. The Exchange further proposes to modify the text of Rule 13.3 to reference “security holders,” rather than stockholders, in the initial sentence, to ensure that the coverage of the rule applies to all securities, including debt securities to the extent applicable, and not just equity securities. The Exchange also proposes to incorporate certain language from FINRA Rule 2251 that provides additional detail regarding the material that must be provided to beneficial owners in the event of a proxy solicitation. Specifically, Rule 13.3 as amended will state that in the event of a proxy solicitation, materials provided pursuant to the Rule shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. The Rule will also require a Member to furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. Finally, the Exchange proposes to modify the title of Rule 13.3 to include reference to proxy voting.

The Exchange believes that these additional changes to Rule 13.3 will help to avoid confusion by Members of the Exchange that are also members of FINRA by further aligning the Exchange’s rules with FINRA Rule 2251. In addition, the Exchange notes that it is party to an agreement with FINRA pursuant to which certain regulatory

responsibility to examine and enforce common rules of the Exchange and FINRA is allocated to FINRA pursuant to Rule 17d-2 under the Act (the “17d-2 Agreement”).<sup>5</sup>

The proposed changes to Rule 13.3 may be sufficient to incorporate Rule 13.3 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

## 2. Statutory Basis

Approval of 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>6</sup> The Exchange believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)<sup>7</sup> requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange is

---

<sup>5</sup> 17 CFR 240.17d-2.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(10).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

adopting proposed Rule 13.3(c) to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that proposed Rule 13.3(b) is consistent with Section 6(b)(5) of the Act,<sup>9</sup> particularly with respect to removal of impediments to, and perfection the mechanism of, a free and open market and a national market system, because the proposed changes will provide for consistent regulation for Members of the Exchange that are members of other SROs with analogous rules.<sup>10</sup> Moreover, the proposed changes to Rule 13.3(a), proposed Rule 13.3(d), and proposed Interpretation and Policy .01 are consistent with FINRA Rule 2251. Accordingly, the Exchange believes that the proposal fosters cooperation amongst SROs because to the extent the Exchange is able to incorporate Rule 13.3 into the 17d-2 Agreement as a rule in common between the Exchange and FINRA (a “Common Rule”), then FINRA will conduct a review for compliance with the Common Rule to the extent a Member of the Exchange is also a member of FINRA, and the Exchange will not conduct a duplicative review of the same activity by that Member. Finally, the Exchange believes that the proposal will contribute to investor protection by defining important requirements to which Members must abide with respect to proxy solicitation, proxy voting and delivery of proxy materials.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

---

<sup>9</sup> Id.

<sup>10</sup> See, e.g., FINRA Rule 2251, ISE Rule 421, NYSE Arca Rule 9.4, and Nasdaq Rule 2251.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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:

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 No. SR-BATS-2011-036 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 No. SR-BATS-2011-036. 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 changes 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 10:00 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-2011-036 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

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

Cathy H. Ahn  
Deputy Secretary

---

<sup>11</sup> 17 CFR 200.30-3(a)(12).