

8. No trustee or officer of the Trust or a Fund, or director, manager or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21494 Filed 9-4-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 10, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 10, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

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

Dated: September 3, 2009.

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

[FR Doc. E9-21716 Filed 9-3-09; 4:15 pm]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-40; File No. S7-19-09]

### Privacy Act of 1974: Establishment of a System of Records

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice to establish a system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") gives notice of a proposed Privacy Act system of records: "Ethics Conduct Rules Files (SEC-60)." This system will contain information related to applicable SEC Ethics Conduct Rules (currently found at 17 CFR Part 200 Subpart M), including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

**DATES:** The proposed system will become effective October 13, 2009, unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before October 8, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-19-09 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 S7-19-09. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml>). Comments are also available for public inspection and copying 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202-551-7209.

**SUPPLEMENTARY INFORMATION:** The Commission gives notice of the proposed establishment of a system of records, entitled "Ethics Conduct Rules Files (SEC-60)." The system will contain information related to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

On May 22, 2009, to consolidate related responsibilities, the Commission transferred all the Commission's Ethics Rules responsibilities that resided in the Office of Human Resources (consisting particularly of the administration of all of the SEC Ethics Conduct Rules files) to the Commission's Ethics Office. Consistent with the transfer of responsibilities, the Commission is establishing a system of records in the Ethics Office to maintain records related to the Ethics Conduct Rules applicable to Commission Members and employees, including reports on securities transactions, holdings, and accounts required by applicable Federal securities laws and regulations.

The Commission has submitted a report of the system of records to the Senate Committee on Homeland Security and Government Affairs, the

House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1966 (61 FR 6435).

Accordingly, the Commission is establishing a system of records to read as follows:

#### **SEC-60**

##### **SYSTEM NAME:**

Ethics Conduct Rules Files.

##### **SYSTEM LOCATION:**

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

SEC Members and employees, past and present.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal securities laws (15 U.S.C. 77s, 78w, 77sss, 80a-37 and 80b-11) and the regulations promulgated thereunder, including the Ethics Conduct Rules currently located at 17 CFR Part 200 Subpart M.

##### **PURPOSE(S):**

For use by authorized SEC Ethics Office personnel, designated by the Ethics Counsel, and from time to time certain other SEC personnel, designated by the Ethics Counsel in his or her discretion, in connection with their official functions related to administering and supervising compliance with the Commission's Ethics Conduct Rules.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To a Federal, State, or local law enforcement agency if the disclosing

agency becomes aware of a violation or potential violation of law or regulation;

2. To a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;

3. To a source when necessary to obtain information relevant to a conflict of interest or securities law investigation or decision;

4. To the National Archives and Records Administration or the General Services Administration in records management inspections;

5. To the Office of Management and Budget during legislative coordination on private relief legislation;

6. To the Department of Justice or in certain legal proceedings when the disclosing agency, and employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation;

7. To reviewing officials in a new office, department or agency when an employee transfers from one position to another subject to the Ethics Conduct Rules;

8. To a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record;

9. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

10. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

11. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or metal file cabinets.

##### **RETRIEVABILITY:**

Records may be retrieved by the individual's name or other personal identifiers, as well as non-identifying information. Information regarding individuals may be obtained through the use of cross-reference methodology.

##### **SAFEGUARDS:**

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Paper records are maintained in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security.

##### **RETENTION AND DISPOSAL:**

These records will be maintained for 6 years or otherwise in accordance with records schedules of the Commission and as approved by the National Archives and Records Administration.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

The Ethics Counsel and the Designated Agency Ethics Official, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1050.

##### **NOTIFICATION PROCEDURE:**

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

**RECORD ACCESS PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

**CONTESTING RECORD PROCEDURES:**

See Record Access Procedures above.

**RECORD SOURCE CATEGORIES:**

Information is provided by current Members and employees of the Commission or their designees in accordance with the requirements of the SEC Ethics Conduct Rules.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: September 1, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-21444 Filed 9-4-09; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60586; File No. SR-BATS-2009-026]

### **Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Fee Schedule to Impose Fees for Ports Used for Order Entry and Receipt of Market Data**

August 28, 2009.

On July 21, 2009, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("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 to amend the fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange with respect to ports used to enter orders into Exchange systems and to receive data from the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 28, 2009.<sup>4</sup> The Commission received no comments regarding the proposal. On August 27, 2009, the Exchange filed Amendment

No. 1 to the proposed rule change.<sup>5</sup> This order grants approval of the proposed rule change.

BATS proposes to begin charging a monthly fee for ports used to enter orders into the Exchange's trading system and to receive data from the Exchange.<sup>6</sup> Specifically, the Exchange proposes to charge \$250.00 per month per pair<sup>7</sup> of any port type other than a Multicast PITCH Spin Server Port or a GRP Port. Thus, the proposed charge will apply to all Exchange FIX, FIXDROP, DROP, TCP PITCH, TCP FAST PITCH, and TOP ports.<sup>8</sup> In addition, the Exchange proposes to provide all Exchange constituents that receive the Exchange's Multicast PITCH feed with 12 pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports.<sup>9</sup> The Exchange proposes to charge such customers \$250.00 per month per additional pair of GRP Ports or additional set of 12 pairs of Multicast PITCH Spin Server Ports. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

The proposed rule change will apply to Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. The Exchange states that it has previously provided ports free of charge to all Members and non-members that use such ports for order entry to the Exchange or for receipt of market data. However, the Exchange states that its infrastructure costs have increased over time. In addition, the Exchange believes

that providing ports free of charge has not encouraged Members and non-members to reserve and maintain ports efficiently, but rather, has led to a significant number of ports that are reserved and enabled by such market participants, but are never used or are under-used. Accordingly, the Exchange believes that the imposition of port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using the Exchange's facilities, and Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>13</sup> which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>14</sup> which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and not unreasonably discriminatory.

The Commission believes that the proposed port fees are equitably allocated among Members and non-members and do not unfairly or unreasonably discriminate between

<sup>5</sup> In Amendment No. 1, the Exchange replaced the bracketed "[July]" with "[August]" in the proposed rule text to reflect the fact that the current fee schedule is dated August 1, 2009. Because the change in Amendment No. 1 is technical in nature, it is not subject to notice and comment.

<sup>6</sup> The Commission notes that BATS will implement the proposed port fees commencing on the first day of the month immediately following Commission approval of this proposed rule change (or on the date of approval, if on the first business day of a month). See Notice, *supra* note 4.

<sup>7</sup> Each pair of ports will consist of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

<sup>8</sup> BATS FIX ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including Multicast PITCH and GRP Ports, permit Members and non-members to receive information from the Exchange.

<sup>9</sup> The Exchange's proposal to provide certain ports free of charge to Multicast PITCH customers is designed to encourage use of the Exchange's Multicast PITCH feed because it is a relatively new offering by the Exchange and because the Exchange believes that the feed is its most efficient feed and will reduce infrastructure costs for both the Exchange and those who utilize the feed.

<sup>10</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 17 CFR 242.603(a).

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

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

<sup>3</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange. See BATS Rule 1.5(n).

<sup>4</sup> Securities Exchange Act Release No. 60364 (July 22, 2009), 74 FR 37285 ("Notice").