cannot be effected at a price that is disadvantageous to either the Replaced Fund or the New Fund. Contract owners will not suffer any adverse tax consequences as a result of the Substitution. Fees and charges under the Contracts will not increase because of the Substitution. Even though they may not rely on Rule 17a–7 under the 1940 Act, the section 17 Applicants submit that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

9. The board of the VIP Trust has adopted procedures, as required by paragraph (e)(1) of Rule 17a–7 under the 1940 Act, pursuant to which the New Fund may purchase and sell securities to and from its affiliates. The section 17 Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the New Fund's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed Substitution will be such as to offer to the New Fund the same degree of protection from overreaching that Rule 17a–7 provides to the New Fund generally in connection with its purchase and sale of securities under that Rule in the ordinary course of its business. In particular, Allianz Life and Allianz NY (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to the New Fund. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its respective registration statement and as required by Rule 22c–1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. Further, the transactions will be reviewed by the Chief Compliance Officer of the VIP Trust on behalf of the VIP Trust's Board of Trustees and will be reported to VIP Trust's Board of Trustees in the same manner as any other Rule 17a–7 transaction involving the New Fund would be reported.

10. The proposed transactions also are reasonable and fair in that they will be effected in a manner consistent with the public interest and the protection of investors. Contract owners will be fully informed of the terms of the Substitution and they will be provided a prospectus for the New Fund. In addition, contract owners will have the opportunity to make a free transfer from the New Fund to any other available Investment Option offered under their Contract, subject to any Investment Option allocation restrictions under their Contract, during the Free Transfer Period.

11. The section 17 Applicants also submit that the Substitution is consistent with the policies of the Replaced Fund and the VIP Trust as recited in the current registration statement and reports filed under the 1940 Act.

12. In addition, section 17 Applicants submit that the proposed Substitution is consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds from the Replaced Fund and subsequently contributed to the New Fund to effect the contemplated in-kind purchases of shares will be valued in accordance with the requirements of Rule 17(a)–7. Therefore, there will be no change in value to any contract owner as a result of the Substitution.

Conclusion

For the reasons and upon the facts set forth above, the Applicants and the section 17 Applicants believe that the requested order meets the standards set forth in section 26(c) and section 17(b), respectively, and should therefore, be granted.

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26390 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2806]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is, for nine months, waiving Investment Adviser Registration Depository annual and initial filing fees for all advisers.

DATES: *Effective Date:* The order will become effective on November 1, 2008.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202–551–6737, Daniel S. Kahl, Branch Chief, at 202–551–6730, or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

Discusson

Section 204(b) of the Investment Advisers Act of 1940 (''Advisers Act'') authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation (''FINRA'') as the operator of the Investment Adviser Registration Depository (''IARD'') system. At the same time, the Commission approved, as reasonable, filing fees.[2] The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.[3] Over 11,000 advisers now use the IARD to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. (''NASAA''),[4] and representatives of FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one year period. The Commission concluded that this was

[1] 15 U.S.C. 80b–4(b).

[2] Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA is formerly known as NASD.

[3] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

[4] The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

appropriate and waived annual fees.[5] In 2006, FINRA wrote to the staff again, this time recommending a two-year waiver of all fees to continue to reduce the surplus. The Commission agreed and issued another order waiving all IARD fees.[6] As a result of these two waivers, the surplus was reduced from • million in 2005 to $5 million.

FINRA has again written to Commission staff, recommending that the waiver of annual IARD fees and the waiver of initial IARD filing fees for SEC-registered advisers be extended for an additional nine months to July 31, 2009.[7] Based on projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses for the next nine months, the Commission believes that the current SEC-associated surplus exceeds the amount needed for operations and system enhancements during this period, and accordingly believes that an extension of the current waiver of both annual and initial filing fees through July 31, 2009 is appropriate in order to continue reducing the SEC-associated surplus. This action is expected to waive approximately $4 million in IARD system fees that SEC-registered advisers would incur, and should reduce the SEC-associated surplus to approximately $3.7 million. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2008 through July 31, 2009 and to all initial applications for registration filed by advisers applying for SEC registration from November 1, 2008 through July 31, 2009.

It is therefore ordered, pursuant to sections 204(b) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from November 1, 2008 through July 31, 2009, the fee otherwise due from SEC-registered advisers is waived, and for initial applications to register as an investment adviser with the SEC filed from November 1, 2008 through July 31, 2009, the fee otherwise due from the applicant is waived.

By the Commission.

Dated: October 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26307 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

[5] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005)

[6] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006).

[7] The recommendation to waive fees through July 2009 corresponds to the expiration of the SEC's contract with FINRA to operate the IARD.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58872; File No. SR–BATS–2008–008]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Limitation of Liability

October 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2008, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. BATS has requested that the Commission waive the 5-day notice requirement and the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[4] If such waivers are granted by the Commission, the Exchange will implement this rule proposal immediately upon commencement of its operations as a national securities 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 11.16, entitled ''LIMITATION OF LIABILITY,'' to codify that it may provide a form of compensation for losses sustained in relation to an Exchange system failure or a negligent act or omission of an Exchange employee.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *Id.*

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 those 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 amend Rule 11.16 to establish a procedure to compensate Members [5] in relation to Exchange systems failures or a negligent act or omission of an Exchange employee. The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for losses sustained in relation to the use of the exchanges' systems, and that some exchanges also provide a form of compensation for negligence by the exchanges' employees. As such, the Exchange seeks to amend BATS Rule 11.16 to conform to current industry practice.

Pursuant to the proposed amendment to Rule 11.16, the Exchange would compensate Members for losses resulting directly from: (i) The malfunction of the Exchange's physical equipment, devices, and/or programming, or (ii) the negligent acts or omissions of the Exchange's employees.[6] Under this proposed rule change, for such malfunctions or negligence, the Exchange would cap its liability: (i) To a single Member at the greater of $100,000 or the amount recovered under any applicable insurance policy on a single trading day, (ii) to all Members at the greater of $250,000 or the amount recovered under any applicable insurance policy on a single trading day, and (iii) to all Members at the greater of $500,000 or the amount recovered under any

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] The Exchange represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, *e.g.*, regardless of whether that Member is registered as a Market Maker with the Exchange.