

Dated: September 10, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21607 Filed 9-15-08; 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 18, 2008 at 1 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 Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 18, 2008 will be:

- Formal orders of investigation;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- An adjudicatory matter; 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 11, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21643 Filed 9-15-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58485; File No. 4-568]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

September 8, 2008.

Pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19d-1(c)(2) thereunder,<sup>2</sup> notice is hereby given that on August 29, 2008, the BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") copies of proposed minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) of the Act<sup>3</sup> requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.<sup>4</sup> In accordance with paragraph (c)(2) of Rule 19d-1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS Exchange proposes to include in its proposed MRVP the policies and procedures currently included in BATS Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").<sup>5</sup>

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange

may impose a fine (not to exceed \$2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under BATS Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; and Rule 11.16, requirement to comply with locked and crossed market rules.

BATS Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.<sup>6</sup>

### I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning BATS Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan is consistent with the Act. Comments may

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

<sup>2</sup> 17 CFR 240.19d-1(c)(2).

<sup>3</sup> 17 CFR 240.19d-1(c)(1).

<sup>4</sup> The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

<sup>5</sup> On August 18, 2008, the Commission approved BATS Exchange's application for registration as a national securities exchange, including the rules governing the BATS Exchange. See Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of the BATS Exchange, the Exchange must file a minor rule violation plan with the Commission.

<sup>6</sup> BATS Exchange attached a sample form of the quarterly report with its submission to the Commission.

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 No. 4-568 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 No. 4-568. 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/other.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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090. 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. 4-568 and should be submitted on or before October 16, 2008.

## **II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action**

Pursuant to section 19d-1 of the Act and Rule 19d-1(c)(2) thereunder,<sup>7</sup> after October 16, 2008, the Commission may, by order, declare BATS Exchange's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan,

File No. 4-568, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-21616 Filed 9-15-08; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58445A; File No. SR-BSE-2008-43]

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of Ownership of MX US 2, Inc.; Correction**

September 10, 2008.

In FR Doc. No. E8-20869, for Tuesday, September 9, 2008, beginning on page 52434, make the following correction. On page 52436, first column, the first full paragraph is revised to read as follows:

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>18</sup> The Exchange has requested that the Commission waive the 30-day operative delay.<sup>19</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because BSE has represented that the Instruments of Accession will be executed on August 29, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instruments of

<sup>8</sup> 17 CFR 200.30-3(a)(44).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> See E-mail from Lisa J. Fall, General Counsel and Corporate Secretary, BOX, to Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on August 29, 2008.

Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>20</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21485 Filed 9-15-08; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58499; File No. SR-NYSE-2008-58]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Make Permanent a Pilot Program Under Which the Exchange Excludes From Its Earnings Standard Gains or Losses From Extinguishment of Debt Prior to Maturity**

September 9, 2008.

#### **I. Introduction**

On July 22, 2008, the New York Stock Exchange LLC ("NYSE" 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 enable the Exchange to adjust the earnings of companies for purposes of the Exchange's pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The proposed rule change was published for comment in the **Federal Register** on August 5, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to amend the earnings standard of section 102.01C(I) of the Exchange's Listed Company Manual ("Manual") to enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The adjustment would relate

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58254 (July 30, 2008), 73 FR 45511.

<sup>7</sup> 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d-1(c)(2).