

ending on the last day of the month ended immediately prior to the most recent distribution declaration date,<sup>3</sup> expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;<sup>4</sup> and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an Order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

#### VII. Amendments to Rule 19b-1

The requested relief will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

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

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

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BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8980; 34-58813; File No. 4-573]

#### Roundtable on Mark-to-Market Accounting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of roundtable discussion; request for comment.

**SUMMARY:** On October 29, 2008 from 9 a.m. to 1 p.m., the Securities and Exchange Commission will hold a roundtable to discuss mark-to-market accounting and the recent period of market turmoil. The roundtable will be organized as two panels. The panels will include investors, issuers, auditors,

<sup>3</sup> If the fund has been in operation fewer than two years, the measured period will begin immediately following the fund's first public offering.

<sup>4</sup> If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

and other parties with experience in mark-to-market accounting. Additionally, representatives from the Financial Accounting Standards Board, the International Accounting Standards Board and the Public Company Accounting Oversight Board will be present as observers.

The roundtable will be held in the auditorium of SEC headquarters at 100 F Street, NE., Washington, DC. The roundtable will be open to the public with seating on a first-come, first-served basis. The roundtable discussions also will be available via Webcast on the SEC's Web site at <http://www.sec.gov>. The roundtable agenda and other materials related to the roundtable, including a list of participants and moderators, will be accessible at <http://www.sec.gov/spotlight/fairvalue.htm>. The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable.

**DATES:** Comments should be received on or before October 28, 2008.

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

#### Electronic Comments

- Use the Commission's Internet submission 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 4-573 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 4-573. 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 also will be 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:** Bert Fox or Liza McAndrew Moberg, Professional Accounting Fellows, at

(202) 551-5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable. The panel discussions will focus on:

- The effects of mark-to-market accounting on financial reporting by financial institutions.
- Potential market behavior effects from mark-to-market accounting.
- The usefulness of mark-to-market accounting to investors and regulators.
- Aspects of the current accounting standards that can be improved.

By the Commission.

Dated: October 20, 2008.

**Jill M. Peterson,**

Assistant Secretary.

[FR Doc. E8-25387 Filed 10-23-08; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58814; File No. SR-Amex-2008-53]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Related to Amendments to Rule 925 (Confirmations) and Rule 921 (Opening of Accounts)

October 20, 2008.

On June 26, 2008, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> Notice of the proposal was published for comment in the **Federal Register** on September 12, 2008.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### I. Description of the Proposed Rule Change

The Exchange proposed to amend Amex Rule 925 to clarify that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts were executed. The Exchange further

<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. 58466 (Sept. 5, 2008) 73 FR 53057 (Sept. 12, 2008).

proposed to amend Amex Rule 921 to permit a General Securities Sales Supervisor to approve the opening of an options account.

#### *A. Options Confirmation Rule (Rule 925)*

Amex Rule 925 requires that every member and member organization promptly furnish to each customer a written confirmation of each options transaction for such customer's account. This confirmation is required to disclose the type of option, the underlying security, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. In addition, Rule 925 requires that each confirmation, by appropriate symbols, must distinguish between Exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options. Rule 925 has been interpreted over the years by market participants to require that written confirmations relating to options transactions specify the options exchange or exchanges on which such options contracts were executed. This proposal seeks to clarify that Rule 925 does not require the name of the options exchange or exchanges on which an options contract is executed.

Prior to August 1999, an options class was typically listed on only one options exchange. In August 1999, the options exchanges began to multiply-list options classes that were previously listed on only one exchange. In October 1999, the Commission stated that it believed a linkage among options markets would benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders.<sup>4</sup> Subsequently, the Commission directed the options exchanges to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. On July 28, 2000, the Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the "Options Linkage Plan" or "Linkage Plan") submitted by the Amex, the Chicago Board Options Exchange, Inc., and the International Securities

Exchange, Inc.<sup>5</sup> The Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange agreed to participate in the Options Linkage Plan in November 2000.<sup>6</sup> As a result of the introduction of multiple trading of options and the implementation of the Linkage Plan, the contracts in a customer options order could be executed on more than one options exchange and the significance of the options exchange or exchanges that execute a particular options transaction has diminished significantly.<sup>7</sup>

Under the duty of best execution, Amex members are required to exercise diligence to obtain the best price when routing customer options trades for execution. The Exchange, as well as the other members of the Options Self Regulatory Council (the "OSRC"),<sup>8</sup> believes that in light of the existing best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange or exchanges on which an options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry-wide. Consequently, the proposal would amend Amex Rule 925 to make clear that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts were executed.

#### *B. Options Account Opening Rule (Rule 921)*

Amex Rule 921 governs the opening of options accounts by members and member organizations. Specifically, Rule 921(c), relating to "Diligence in Opening Account," provides that in approving a customer's account for options transactions, a member or member organization shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information (which shall be retained in accordance with Amex Rule 922). Based on such

information, the branch manager or other registered options principal ("ROP") is required to approve in writing the customer's account for options transactions. If the branch manager is not a ROP, the branch manager's approval of the account must be confirmed within a reasonable time by a ROP. The Exchange and the other members of the ORSC believe that an amendment to the current options account opening procedures is warranted so that a general securities sales supervisor, in addition to a ROP, is able to open an options account without the approval of a ROP. The other members of the ORSC are also expected to file similar amendments to their options account opening rules.

The Exchange believes that permitting a general securities sales supervisor to approve the opening of an options account would be appropriate and would properly reflect the maturity of the options market and the manner in which the uses of options are more integrated with other securities in the implementation of investment strategies.<sup>9</sup> In particular, the Exchange believes that the proposed amendment to Rule 921 would further permit member firms to integrate their options activities into their overall supervisory and compliance structures that monitor all securities products.

## **II. Discussion and Findings**

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with section 6 of the Exchange Act,<sup>10</sup> in general, and furthers the objectives of section 6(b)(5),<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in facilitating transactions in securities. The Commission also finds that the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the

<sup>5</sup> See Exchange Act Release No. 43086 (Jul. 28, 2000), 65 FR 48023 (Aug. 4, 2000).

<sup>6</sup> See Exchange Act Release Nos. 43573 (Nov. 16, 2000), 65 FR 70850 (Nov. 28, 2000) and 43574 (Nov. 16, 2000), 65 FR 70851 (Nov. 28, 2000) (approval order).

<sup>7</sup> Modifications to this paragraph discussed in telephone conference between Jeffrey P. Burns, Vice-President & Associate General Counsel, American Stock Exchange LLC, and Max Welsh, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, on August 7, 2008.

<sup>8</sup> The ORSC consists of the options exchanges and the Financial Industry Regulatory Authority, Inc. ("FINRA").

<sup>9</sup> The Commission recently approved the elimination of the Senior Registered Options Principal ("SROP") and Compliance Registered Options Principal ("CROP") supervisory categories, permitting member firms to supervise their options activities through their overall supervisory and compliance programs that monitor all other securities products. See Exchange Act Release No. 57738 (April 29, 2008), 73 FR 25805 (May 7, 2008) (approval order).

<sup>10</sup> 15 U.S.C. 78f(b). In approving this proposal, 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)(5).

<sup>4</sup> See Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999).

public interest, by clarifying options confirmation and account opening procedure rules to better reflect the realities of the modern options market and the compliance and regulatory structures adopted by firms. The Commission believes that the proposal is consistent with section 6(b)(5) Exchange Act because the proposed amendments to Amex Rules 925 and 921 better reflect the manner in which standardized options are listed and traded on the options exchanges and integrated into firms' general securities supervision and compliance programs.

### III. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2008-53) be, and hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-25371 Filed 10-23-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58776; File No. SR-BATS-2008-007]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled "Order Execution"

October 14, 2008.

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> notice is hereby given that on October 10, 2008, BATS Exchange, Inc. ("BATS" or the "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,<sup>3</sup> which renders the proposal effective upon filing with the Commission. BATS has also requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is 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 11.13, entitled "Order Execution," to more closely mirror the rules of other self-regulatory organizations related to order routing and to provide the Exchange's Outbound Router (as defined below) with additional flexibility when routing orders away from the Exchange.

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 routing performed in connection with the operation of the Exchange will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),<sup>5</sup> subject to Section 6 of the Act.<sup>6</sup> The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission.

The purpose of the proposed rule change is to provide the Exchange's Outbound Router with additional flexibility when routing orders away

from the Exchange. The proposed modifications will permit the Outbound Router to route to additional Trading Centers (as defined in Exchange Rule 2.11),<sup>7</sup> without limiting the permissible destinations to execution venues with "protected quotations" (as defined in Rule 600(b)(58) of the Act).<sup>8</sup> Under the proposed rule, orders could be routed to one or more Trading Centers provided that such routing is compliant with Regulation NMS, specifically, Rule 611 thereof (the "Order Protection Rule").<sup>9</sup> Such Trading Centers may include execution venues known as "dark books."

Under current Rule 11.13, when an incoming market or marketable limit order is received by the Exchange, the order will first check the BATS Book. If such order is not executed in full against liquidity on the BATS Book, and is eligible for routing based on the User's instructions, then the order will be transmitted to the Outbound Router to be routed away. The Outbound Router will then route the order to one or more protected quotations for potential execution in compliance with the Order Protection Rule of Regulation NMS. This process continues until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. Following the routing process described above, the order will return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to protected quotations at that next permissible price level.

After the proposed rule change, the Order Router may route orders not only to protected quotations, but also to other Trading Centers, so long as such routing is in compliance with the Order Protection Rule of Regulation NMS. With the exception of this proposed change, the order routing process will continue as it does currently. Thus, orders will continue to be routed in the order routing process until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. The order will then return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be

<sup>7</sup> The Exchange's definition of Trading Center, contained in Rule 2.11, is consistent with the definition of "trading center" contained in Rule 600(b)(78) of Regulation NMS.

<sup>8</sup> 17 CFR 242.600(b)(58).

<sup>9</sup> 17 CFR 242.611.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> *Id.*

<sup>5</sup> 15 U.S.C. 78c(a)(2).

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