variance of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is made to the plan in question. The PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. 552.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, based on the following reasons:

(1) The approval of a variance or exemption would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) The approval of a variance or exemption would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on P&O Ports' request for a variance.

Decision

On August 3, 2007, the PBGC published a notice of the pendency of a request by P&O Ports (the ''Purchaser'') for a variance or exemption (''variance'') from the bond/escrow requirement of section 4204(a)(1)(B) regarding its purchase of SSA Gulf, Inc., d/b/a Harborside Refrigeration and Garrison (the ''Seller'') (72 FR 4538). According to the request, the Seller was obligated to contribute to Tampa Maritime Association-International Longshoremen's Association Pension Plan (the ''Plan''), a multiemployer defined benefit pension plan, pursuant to a collective bargaining agreement with Local 1402 of the International Longshoremen's Association.

According to the Purchaser's representations, the Purchaser acquired, under an asset sale agreement effective May 26, 2006, the business assets of the Seller's stevedoring and related businesses in the Port of Tampa. The parties structured the transaction to comply with section 4204 of ERISA, and the Purchaser represents the following:

(1) The purchase agreement expressly obligates the Purchaser to contribute to the Plan for substantially the same contribution base units for which the Seller was obligated,

(2) The Seller agrees to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations, but for section 4204, should the Purchaser withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability, and,

(3) The Purchaser agrees to post a bond, establish an escrow, or seek a variance from the bond/escrow requirement.

The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is $421,864. On April 9, 2007, the Purchaser established on behalf of the Plan an escrow account through Bank of America in that amount. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is $1,191,462. The Purchaser asserts that certain financial information to support its request for a variance from the bond/escrow requirement is privileged and confidential. Consequently, as permitted by the PBGC regulation in these circumstances, the request is directed to the PBGC, rather than the Plan. Accordingly, the Purchaser submitted to the PBGC financial statements showing that the amount of the net tangible assets of the Purchaser's controlled group significantly exceed the Seller's estimated withdrawal liability of $1,191,462.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, PBGC has determined that a variance from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for a variance from the bond/escrow requirement.

The granting of a variance or an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 21st day of February, 2008.

Charles E. F. Millard,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. E8–3990 Filed 2–29–08; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28170; 812–13481]

Eaton Vance Mutual Funds Trust, et al.; Notice of Application

February 26, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Eaton Vance Mutual Funds Trust, Eaton Vance Special Investment Trust (the ''Trusts''), Eaton Vance Management (''EVM''), Boston Management and Research (''BMR,'' together with EVM, the ''Advisers''), and Eaton Vance Distributors, Inc. (the ''Distributor'').

Filing Dates: The application was filed on January 18, 2008, and amended on January 30, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 255 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Nadya B. Roytblat,

Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–8090).

Applicants' Representations

1. The Trusts are organized as Massachusetts business trusts and are registered under the Act as open-end management investment companies. Applicants request an exemption to the extent necessary to permit any existing or future series of the Trusts and any other registered open-end investment company advised by the Advisers or any person controlling, controlled by or under common control with the Advisers, that may rely on rule 12d1–2 under the Act (each a '' Fund'') to also invest to the extent consistent with its investment objective, policies, strategies and limitations, in futures contracts, options on futures contracts, swap agreements, other derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'') in addition to registered investment companies (''Underlying Funds'') and other securities.

2. The Advisers, both Massachusetts business trusts registered under the Investment Advisers Act of 1940, serve as investment advisers to the Funds. EVM is a wholly-owned subsidiary of Eaton Vance Corporation, a publicly held Maryland corporation, and BMR is a subsidiary of EVM. The Distributor, an indirect wholly-owned subsidiary of Eaton Vance Corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934 Act (''Exchange Act''), and serves as the principal underwriter for the Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3960 Filed 2–29–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57383; File No. SR-BSE–2008–05]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 5, To Amend the Rules of the Boston Options Exchange Related to Obvious Error Procedures

February 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

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

[2] 17 CFR 240.19b–4.