

plans to submit this existing collections of information to the Office of Management and Budget for extension and approval.

- Rule 12d2-2 (17 CFR 240.12d2-2) and Form 25 (17 CFR 249.25) Removal and Notification of Removal from Listing and/or Registration.

On February 12, 1935, the Commission adopted Rule 12d2-2,<sup>1</sup> and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) ("Act"), to establish the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.<sup>2</sup> The Commission adopted amendments to Rule 12d2-2 and Form 25 in 2005.<sup>3</sup> Under the amended Rule 12d2-2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting. Without Rule 12d2-2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are ten national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2-2 and Form 25.<sup>4</sup> The burden of complying with Rule 12d2-2 and Form

25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and the American Stock Exchange LLC than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 994 responses under Rule 12d2-2 and Form 25 for the purpose of delisting equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 994 annual burden hours for all exchanges. In addition, since approximately 371 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 371 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2-2 is 1,365 hours. The related costs associated with these burden hours are \$76,177.50.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 60 days of this notice.

Dated: September 15, 2008.

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

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of: EA Industries, Inc., Ebiz Enterprises, Inc., and Einstein Noah Bagel Corp. (n/k/a ENBC Corp.); Order of Suspension of Trading

September 17, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EA Industries, Inc. because it has not filed any periodic reports since the period ended June 27, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ebiz Enterprises, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Einstein Noah Bagel Corp. (n/k/a ENBC Corp.) because it has not filed any periodic reports since the period ended April 24, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 17, 2008, through 11:59 p.m. EDT on September 30, 2008.

By the Commission.

**Jill M. Peterson,**  
*Assistant Secretary.*

[FR Doc. E8-22071 Filed 9-17-08; 4:15 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58546; File No. SR-BATS-2008-003]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.5, Entitled "Orders and Modifiers," To Provide for a New Order Type—Modified Destination Specific Order

September 15, 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 September 8, 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, II, and III 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. 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 11.5, entitled “Orders and Modifiers,” to provide for a new order type, a Modified Destination Specific Order.

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 purpose of the proposed rule change is to provide an additional order type to Users of the Exchange. The proposed new order type is a “Modified Destination Specific Order,” which is a market or limit order that instructs the System to route the order to a specified away trading center or centers as approved by the Exchange from time to

time. Such trading centers may include execution venues know as “dark books.” The order would not be exposed to the BATS Book before being routed to a specified destination or destinations. An order that is not executed in full after routing away would return to the Exchange, receive a new timestamp, and be processed in the manner described in Rule 11.9(a)(2). The routing performed in connection with this new order type 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>4</sup> subject to Section 6 of the Act.<sup>5</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. Routing of Modified Destination Specific Orders will be subject to the same requirements as other orders routed by the Outbound Router, which are contained in Rule 2.11. Accordingly, the Exchange believes that routing of Modified Destination Specific Orders is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the addition of this order type.

The Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange. Accordingly, the addition of a Modified Destination Specific Order type to BATS Rule 11.5 promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

##### **2. Statutory Basis**

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>6</sup> In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in

general, protect investors and the public interest.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change is non-controversial and does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

The Exchange believes that the addition of the new order type, a Modified Destination Specific Order, is consistent with other rules of the Exchange previously approved by the Commission, including: (1) Its Destination Specific Order, which operates similarly to the proposed order type, except that a Destination Specific Order does not bypass the BATS Book when first received by the Exchange,<sup>10</sup> and (2) Rule 2.11, which governs the Outbound Router of the Exchange. Furthermore, the Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). Upon request from BATS, the Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing. 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See BATS Rule 11.5(c)(10).

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

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78(f)(b). [sic]

<sup>7</sup> 15 U.S.C. 78f(b)(5).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2008-003 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BATS-2008-003. 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/sro.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 change 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-BATS-2008-003 and should be submitted on or before October 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21947 Filed 9-18-08; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58550; File No. SR-NYSE-2008-68]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Determine That a Company Meets the Exchange's Market Value Requirements by Relying on a Third-Party Valuation of the Company

September 15, 2008.

##### I. Introduction

On July 31, 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 allow the Exchange, on a case by case basis, to exercise discretion to list a company whose stock is not previously registered under the Act and that is listing upon effectiveness of a selling shareholder registration statement without a related underwritten offering, by relying on an independent third-party valuation of the company and information regarding trading in a private placement trading market to determine that such a company has met its market value requirements. The proposed rule change was published for comment in the **Federal Register** on August 11, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

##### II. Description of the Proposal

Section 102.01B of the Exchange's Listed Company Manual ("Manual") currently requires that companies listing on the Exchange in connection with their initial public offering ("IPO") or as a result of a spin-off or under the Affiliated Company standard must demonstrate an aggregate market value of publicly-held shares of \$60 million at the time of listing. All other companies must demonstrate a market value of

publicly-held shares of \$100 million.<sup>4</sup> In addition, the Valuation/Revenue with Cash Flow, Pure Valuation/Revenue, and Affiliated Company standards of Section 102.01C require a company to have a global market capitalization of \$500 million, \$750 million, and \$500 million, respectively. Sections 102.01B and 102.01C of the Manual provide that, in connection with a company's IPO, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with these listing standards. In the case of a spin-off, the company may rely on a letter from the parent company's investment banker or other financial adviser.

The Exchange notes that it has been approached by a number of private companies that would like to list upon the effectiveness of a selling shareholder registration statement. NYSE represents that these private companies typically have sold a significant amount of common stock to qualified institutional buyers in one or more private placements and, as a condition to those sales, have agreed to file a registration statement to facilitate the resale of the privately-placed shares. These companies have not had any prior public market for their common stock and are not contemplating an underwritten offering in connection with their selling shareholder registration statement. As such, the company would not be able to obtain a written representation from an underwriter to determine compliance with the market value requirements, as a company would in the case of an IPO, and the Exchange cannot rely on trading on any predecessor public market to evaluate the company's market value, as would be possible with a company transferring from another market. Thus, while the company may meet all of the Exchange's other listing criteria, the company would not be able to satisfy NYSE's current market value requirements in Sections 102.01B and 102.01C of the Manual.

The Exchange proposes to amend Sections 102.01B and 102.01C of the Manual to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such company is listing, without a related underwritten offering, upon effectiveness of a

<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. 58299 (August 4, 2008), 73 FR 46670.

<sup>4</sup> Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.

<sup>11</sup> 17 CFR 200.30-3(a)(12).