For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67685; File No. SR–BATS–2012–023]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Amend BATS Rules 14.2 and 14.3 To Adopt Additional Listing Requirements for Reverse Merger Companies and To Align BATS Rules With the Rules of Other Self-Regulatory Organizations

August 17, 2012.

I. Introduction

On June 15, 2012, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BATS Rules 14.2 and 14.3 to adopt additional listing requirements for companies that become a reporting company under the Exchange Act by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger'') and to align BATS Rules with the rules of other self-regulatory organizations. The proposed rule change was published for comment in the **Federal Register** on July 5, 2012.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

BATS proposed to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies through a Reverse Merger. In a Reverse Merger, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of Reverse Merger companies in recent times. The Commission has taken direct action against Reverse Merger companies. During 2011, the Commission suspended trading in, and revoked the securities registration of, a number of Reverse Merger companies.[4] The Commission also brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger companies.[5] In addition, the Commission issued a bulletin on the risks of investing in Reverse Merger companies, noting potential market and regulatory risks related to investing in Reverse Merger companies.[6]

In light of the well-documented concerns related to some Reverse Merger companies described above, BATS stated its belief that it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of Reverse Merger companies. As proposed, a Reverse Merger company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) Traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange following the consummation of the Reverse Merger and (i) in the case of a domestic issuer, filed with the Commission a form 8–K including all of the information required by Item 2.01(f) of Form 8–K, including all required audited financial statements; or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20–F;

(2) Maintained on both an absolute and an average basis for a sustained period a minimum stock price of at least $4, but in no event for less than 30 of the most recent 60 trading days prior to each of the filing of the initial listing application and the date of the Reverse Merger company's listing on the Exchange, except that a Reverse Merger company that has satisfied the one-year trading requirement described in paragraph (1) above and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the information described in paragraph (1) above will not be subject to this price requirement; and

(3) Timely filed with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in paragraph (1) above.

In addition, a Reverse Merger company would be required to maintain on both an absolute and an average basis a minimum stock price of at least $4 through listing.

BATS stated that requiring a ''seasoning'' period prior to listing for Reverse Merger companies should provide great assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period would also provide time for regulatory and market scrutiny of the company and for any concerns that would preclude listing eligibility to be identified.

BATS stated its belief that the proposed rule change would increase transparency to issuers and market participants with respect to the factors considered by the Exchange in assessing Reverse Merger companies for listing and should generally reduce the risk of regulatory concerns with respect to these companies being discovered after listing. BATS further noted that, while it believes that the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a Reverse Merger company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of the proposal amending BATS Rules 14.2(c) and 14.3(b)(9) (which will both be applicable to Reverse Merger companies which qualify to list under BATS Rules) and as defined above, a Reverse Merger would mean any transaction whereby an operating company became an Exchange Act reporting company by combining either directly or indirectly with a shell company that was an Exchange Act reporting company, whether through a Reverse Merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under BATS Rule 14.2(b) (the Exchange's standard for companies whose business plan is to complete one or more acquisitions). In determining whether a company was a shell company, BATS would consider, among other factors:

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67304 (June 28, 2012), 77 FR 39781 (''Notice'').

[4] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[5] *See* Schapiro Letter at page 4.

[6] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

whether the company was considered a ''shell company'' as defined in Rule 12b–2 under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generates revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a Reverse Merger company would be required to comply with one of the initial listing standards set forth in BATS Rule 14.4 or 14.5 and the stock price and market value requirements of BATS Rule 14.8 or 14.9, as appropriate. Proposed Rules 14.2(c)(3) and 14.3(b)(9) would supplement and not replace any applicable requirements of Chapter XIV of BATS Rules. In addition to the otherwise applicable requirements of BATS Rules, a Reverse Merger company would be eligible to submit an application for an initial listing only if it meets the additional criteria specified above.

BATS would continue to have the discretion to impose more stringent requirements than those set forth above if the Exchange believed that it was warranted in the case of a particular Reverse Merger company, based on, among other things, an inactive trading market in the Reverse Merger company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger company's independent auditor and had not yet implemented an appropriate corrective action plan.

BATS further stated that any Reverse Merger company would have to comply with all listing standards set forth in BATS Rules, including corporate governance standards. BATS also noted that it would monitor the compliance with applicable BATS Rules by any Reverse Merger company and would investigate any issues that indicate that a Reverse Merger company is non-compliant with BATS Rules.

A Reverse Merger company would not be subject to the requirements of proposed BATS Rules 14.2(c)(3) and 14.3(b)(9) if, in connection with its listing, it completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger company will be at least $40 million.[7] In that case, the Reverse Merger company would only need to meet the initial listing standards. BATS stated that it believes that it is appropriate to exempt Reverse Merger companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO or any other company listing in conjunction with an initial firm commitment underwritten public offering, so it would be inequitable to subject them to more stringent requirements.

BATS further noted that the proposal is based on and consistent with recent Commission approvals of analogous rules for the New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''AMEX'') and the NASDAQ Stock Market LLC (''Nasdaq'').[8]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[9] and, in particular, Section 6(b)(5) of the Act,[10] which, among other things, requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

BATS proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, the Commission previously approved similar filings by Nasdaq, NYSE and NYSE Amex.[11] The proposal, and those previously filed by Nasdaq, NYSE and NYSE Amex, among other things, are intended to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The current proposal is also intended to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and filed with the Commission at least one full year of all

[7] The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

[8] *See* Securities Exchange Act Release Nos. 65709 (November 8, 2011), 76 FR 70795 (November 15, 2011) (File No. SR–NYSE–2011–38); 65710 (November 8, 2011), 76 FR 70790 (November 15, 2011) (File No. SR–NYSEAmex–2011–55); 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (File No. SR–NASDAQ–2011–073).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 8.

required audited financial statements following the Reverse Merger transaction before it is eligible to list on BATS. The Reverse Merger company also must have filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer have been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company has traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the validity of the financial and other information made available to the public.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) complete a substantial firm commitment underwritten public offering in connection with its listing, or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the Reverse Merger, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

For the reasons discussed above, the Commission believes that BATS's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–BATS–2012–023) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

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[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7990]

Certification Related to the Khmer Rouge Tribunal

Pursuant to the authority vested in me under Section 7044(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112–74) (SFOAA) and Delegation of Authority 245–1, I hereby certify that that the United Nations and Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the Extraordinary Chambers in the Courts of Cambodia (also known as the ''Khmer Rouge Tribunal'').

This Certification shall be published in the **Federal Register**, and sent, along with related Memorandum of Justification, to the appropriate committees of the Congress.

Dated: August 13, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Section 7044(c) of the Department of State, Foreign Operations Appropriations Act, 2012 (Div. I, Pub. L. 112–74)

Funding for the Extraordinary Chambers in the Courts of Cambodia

Sec. 7044(c) Cambodia.—Funds made available in this Act for a United States contribution to a Khmer Rouge tribunal may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and the Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the tribunal.

Memorandum of Justification for Certification Related to the Khmer Rouge Tribunal Under Section 7044(C) Of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2012

Section 7044(c) of the Department of State, Foreign Operations and Related Program Appropriations Act, 2012 (Div. I Pub. L. 112–74), provides that funds appropriated by that act for a United States contribution to the Extraordinary Chambers in the Courts of Cambodia (ECCC, also known as the Khmer Rouge Tribunal) may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations (UN) and Royal Government of Cambodia (RGC) are taking credible steps to address allegations of corruption and mismanagement within the ECCC. Deputy Secretary Nides has signed the certification pursuant to State Department Delegation of Authority 245–1.

Background

The ECCC, which began operations in 2006, was established as a national court with UN assistance to bring to justice senior leaders and those most responsible for the deaths of as many as two million Cambodians under the Khmer Rouge regime, which was in power from April 17, 1975 until January 6, 1979. In 2010, the ECCC completed its first case (Case 001), convicting Kaing Guek Eav (aka ''Duch''), former chief of the Tuol Sleng torture center, of crimes against humanity and war crimes, and sentenced him to 35 years in prison. Duch's trial was the first attempt in three decades to hold a Khmer Rouge official accountable for that era's atrocities and was a milestone in the history of Cambodian justice. In