SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55796; File No. SR-NYSE-2007-28)

May 22, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change to Exempt Limited Partnerships from Certain of its Shareholder Approval Rules

I. Introduction

On March 9, 2007, the New York Stock Exchange LLC (the "NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act ("Act"), and Rule 19b-4 thereunder,[2] a proposed rule change to exempt limited partnerships from certain of the Exchange's shareholder approval rules. The proposed rule change was published for comment in the Federal Register on April 2, 2007.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to exempt limited partnerships from the obligation to obtain shareholder approval under the circumstances set forth in Manual Sections 312.03(b), (c), and (d) for the issuance of common stock and securities convertible into or exchangeable for common stock.[4]

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 55528 (March 26, 2007), 71 FR 15747.

4 NYSE-listed limited partnerships would still be subject to the Exchange's shareholder approval requirements for equity compensation plans. See NYSE Listed Company Manual Sections 303A.08 and 312.03(a). Moreover, the Commission notes that the filing does not in any way limit the applicability of the provisions of the Listed Company Manual relating to limited partnership roll-up transactions. See NYSE Listed Company Manual Section 105.

Subject to certain exceptions specified therein, Manual Sections 312.03(b), (c), and (d) require listed issuers to obtain shareholder approval prior to the issuance of common stock or securities convertible into or exchangeable for common stock in any transaction or series of related transactions in the following situations:

- Where the potential dilution exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance to: (a) a director, officer or substantial security holder of the company (each a "Related Party"); (b) a subsidiary, affiliate or other closely-related person of a Related Party; or (c) any company or entity in which a Related Party has a substantial direct or indirect interest.

- If the Related Party involved in a transaction covered by the preceding bullet is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as each of the book and market value of the issuer's common stock, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

- If: (a) the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or (b) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

- If the issuance will result in a change of control of the issuer.

The Exchange stated that the policy underlying these requirements is that shareholders should have the right to vote on any issuance of common stock that is materially dilutive of either their voting or economic interest in the company, and that Nasdaq has similar shareholder approval requirements to those of the NYSE. The Exchange stated, however, that Nasdaq

exempts limited partnerships ("LPs") from those requirements,[5] which the Exchange believes has placed it at a disadvantage in competing with Nasdaq for initial public offerings and transfers of LPs.

The Exchange stated several reasons that it believes LPs may be appropriately excluded from certain shareholder approval rules. First, the Exchange stated that to be treated as a partnership for federal tax purposes, an LP must ensure that 90% of its income is derived from "qualified sources," which generally refers only to income derived from natural resource-related activities. Most listed LPs are engaged in energy-related businesses. The typical business model of LPs in the energy industry is to use their capital to acquire assets (e.g., pipelines) that produce predictable revenue streams and to commit in their partnership agreements to distribute most of their profits to the LP's unit holders. These LPs acquire assets frequently and pay for them by issuing additional LP units. The Exchange believes that the ability of an LP listed on Nasdaq to issue additional LP units without the expense and uncertainty of obtaining shareholder approval provides Nasdaq with an advantage over the Exchange in attracting and retaining listings of LPs.

The Exchange also stated its belief that an analysis of the policies regarding voting and economic dilution underpinning its shareholder approval requirements demonstrates that it is appropriate to exempt LPs from their application. Listed LPs generally provide very limited voting rights to their unit holders, and typically, control of the LP resides with the general partner ("GP") and the LP's board is that of the GP. The owner of the GP appoints the board and the common unit holders of the LP have no voting rights with respect to the election of directors. LP

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5 See Nasdaq Marketplace Rule 4360 ("Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships"); see also Securities Exchange Act Release No. 30811 (June 15, 1992); 57 FR 28542 (June 25, 1992) (SR-NASD-91-58); see also Securities Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994) (SR-NASD-93-3).

partnership agreements often provide that LP unit holders can vote only on a merger or dissolution of the LP or on any amendment to the partnership agreement that is adverse to their interests. As such, the Exchange believes that investors who buy LP units generally have no expectation that they will be able to vote. Therefore, the Exchange believes that the policy that shareholders should be able to vote on any stock issuances that are materially dilutive of their voting power is of less relevance to LPs than to regular corporations. Furthermore, the Exchange states that because LP unit holders generally do not have the right to elect directors, most LPs do not hold annual meetings. Therefore, it would not be possible for an LP to arrange for shareholder approval to be obtained in conjunction with an annual meeting, as would be possible for a regular company, and an LP could potentially have to call a special meeting every time it needed approval of an issuance pursuant to the shareholder approval rules.

The Exchange also believes that the economic dilution concerns underpinning the shareholder approval rules are also less relevant in the case of LPs. Listed LPs typically are required under their partnership agreements to distribute almost all of their earnings to their unit holders and specify a minimum quarterly distribution that the LP is required to make. As such, LPs will only invest in new assets if they know that those assets will be sufficiently accretive to earnings to pay the minimum quarterly distribution required for the additional units that are sold to raise the capital to pay for those assets.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable

to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In making this finding, the Commission notes that shareholder approval rules are extremely important because, among other things, such rules provide shareholders with a voice in transactions that are material to, and may have an effect on, their respective investments. However, for many of the reasons noted by the Exchange, the Commission agrees with the Exchange that treating LPs differently with respect to certain types of shareholder approval rules is appropriate given the use of LPs and the expectations of investors in such entities. The Commission believes, however, that the rationale for treating an LP differently than, for example, a traditional corporation with respect to shareholder input on equity compensation is less compelling. Accordingly, the Commission believes that it is beneficial from a corporate governance perspective that the Exchange will be retaining for LPs its rules regarding shareholder approval of equity compensation.[8] Finally, in approving the proposed rule change to Manual Sections 312.03(b), (c), and (d), the Commission notes that the proposal will conform the Exchange's rules to Nasdaq's comparable rules for limited partnerships.

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6 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).

7 15 U.S.C. 78f(b)(5).

8 See NYSE Listed Company Manual Sections 303A.08 and 312.03(a).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-NYSE-2007-28) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon
Deputy Secretary

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9 15 U.S.C. 78s(b)(2).

10 17 CFR 200.30-3(a)(12).