

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.

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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55793; File No. SR-NYSE-2007-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend NYSE Rule 80A.40(b) To Update the Definition of "Program Trading," To Substitute Simplified Audit Trail Requirements, and To Make Conforming Amendments to NYSE Rule 410B

May 22, 2007.

On March 22, 2007, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change that would (i) to amend NYSE Rule 80A.40 to eliminate the minimum dollar value from the definition of program trading, and (ii) substitute simplified audit trail requirements in place of the more cumbersome reporting requirements that currently apply to program trading. NYSE also proposed to make conforming amendments to NYSE Rule 410B. In connection with those changes, NYSE also would issue guidance regarding the definition of a "coordinated strategy," as that term is used in Rule 80A.40. The Commission published notice of the proposal in the **Federal Register** on April 17, 2007.³ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and

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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5),⁶ which requires that an Exchange have rules that are designed to promote just and equitable principles of trade, 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 Commission notes that the NYSE has represented that it has carefully evaluated the change in definition of program trading and related changes effectuated in this proposed rule change, and the Exchange believes that these changes to the definition of program trading and the revised audit trail information should result in more effective surveillance of the market impact of program trading. Based on these representations, the Commission believes that the proposed rule change is reasonably designed to improve the quality of the program trading data for this vital surveillance program.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change (SR-NYSE-2007-34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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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).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 55615 (April 11, 2007), 72 FR 19225.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).