

change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to amend Section 802.01E of the Manual to end, as of December 31, 2007, the Exchange's discretion to continue the listing of certain companies that are twelve or more months late in filing their annual reports<sup>4</sup> with the Commission.

Section 802.01E of the Manual provides that if a company fails to timely file a periodic annual report with the Commission, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within six months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period depending on the company's specific circumstances; but in any event if the company does not file its periodic annual report by the end of the one year period ("Initial Twelve-Month Period"), the Exchange will begin suspension and delisting procedures in accordance with the procedures in Section 804.00 of the Manual.

Section 802.01E states that, in certain unique circumstances, a listed company that is delayed in filing its annual report beyond the Initial Twelve-Month Period may have a position in the market (relating to both the nature of its business and its very large publicly held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such a case, where the Exchange believes that the company remains suitable for listing given, among other factors,<sup>5</sup> its relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and where there is a reasonable expectation that the company will be able to resume timely filings in the future, the Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding the company's failure to file within the time periods specified in Section 802.01E of the Manual.

The Exchange has determined that it is unnecessary for the Exchange to retain the discretion to allow companies

to continue to be listed beyond the Initial Twelve-Month Period after December 31, 2007. Therefore, under this proposed amendment, the Exchange's discretion to allow a company to continue to be listed beyond the Initial Twelve-Month Period set forth in Section 802.01E of the Manual shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange had determined to continue listing a company beyond the Initial Twelve-Month Period under the circumstances specified in Section 802.01E of the Manual as described above,<sup>6</sup> and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Manual.

## III. Discussion

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. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> which requires an Exchange to 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.<sup>8</sup>

Specifically, the Commission believes that eliminating the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports will encourage listed companies to file any late annual reports as quickly as practicable. This should benefit the public interest and protect investors by helping to assure that investors receive up to date financial information about listed companies. Eliminating the Exchange's discretion to not commence delisting of a company past the Initial 12 Month Period ensures that companies cannot continue to trade on the Exchange for extended periods of time without making publicly available their required annual reports.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the

proposed rule change (SR-NYSE-2006-116) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55216; File No. SR-NYSE-2006-109]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to NYSE Regulation, Inc. Policies Regarding Exercise of Power To Fine NYSE Member Organizations and Use of Money Collected as Fines

January 31, 2007.

On December 6, 2006, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to adopt internal procedures for NYSE Regulation, Inc. ("NYSE Regulation") to assure the proper exercise by NYSE Regulation of its power to fine member organizations of the Exchange and the proper use by NYSE Regulation of the funds so collected. The proposed rule change was published for comment in the **Federal Register** on December 29, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of the exchange provide for the equitable allocation of reasonable dues,

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<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. 55003 (December 22, 2006), 71 FR 78497 ("Notice").

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> The term "annual report" used herein refers to the filing of Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR.

<sup>5</sup> See Section 802.01E of the Manual for a complete list of the factors that the Exchange must consider when determining whether to continue listing a company beyond the Initial Twelve-Month Period.

<sup>6</sup> See *supra* note 5 and accompanying text.

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

<sup>8</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

fees, and other charges among the exchange's members and issuers and other persons using its facilities. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of the 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 a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should help to increase transparency regarding the processes NYSE Regulation has in place to ensure that the power of the Exchange, through NYSE Regulation, to impose fines on its members for disciplinary violations is exercised appropriately, and particularly to guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2006-109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55214; File No. SR-NYSEArca-2006-50]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Registration Rules of NYSE Arca Equities, Inc.

January 31, 2007.

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 November 14, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), 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 substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on January 12, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to amend certain NYSE Arca Equities Rules governing registration of employees of Equity Trading Permit ("ETP") Holders<sup>3</sup> in order to clarify registration procedures and make them consistent with the procedures of other self-regulatory organizations ("SROs"). The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and [www.nysearca.com/regulation/filings.asp](http://www.nysearca.com/regulation/filings.asp).

#### 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 aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rules 2.4, 2.21, and 9.27 (referred to herein as Rules 2.4, 2.21 and 9.27) in order to clarify registration procedures and ongoing compliance obligations for ETP Holders and their registered persons. Further, the Exchange proposes to amend these rules so that they are consistent with industry practices and with the operation of the Central Registration Depository ("CRD") system maintained by the National Association of Securities Dealers, Inc. ("NASD"). The

proposed rule changes are similar to the rules of other SROs.<sup>4</sup>

##### Consideration of Requests for Waivers of Examination Requirements

The Exchange proposes to amend Rule 2.4(c), which governs requests from ETP Holder applicants to waive applicable examinations requirements prescribed by the Exchange. Specifically, the Exchange proposes to add new waiver standards under which the Corporation has discretion to grant waivers so that the Exchange's practices are generally consistent with the criterion set forth in NASD Rule 1070(d) and Supplementary Material .15(1)(b) to NYSE Rule 345.

##### Filing of Registration Documentation with the Exchange

The Exchange proposes to amend Rule 2.21, which governs registration procedures for employees of ETP Holders. Specifically, the Exchange proposes to amend the rule to provide manual registration procedures for registration categories (e.g., floor clerk) for which CRD does not provide electronic registration.<sup>5</sup>

##### Continuing Education Requirements

Currently, employees of ETP Holders who wish to initiate and maintain registration with the Corporation must follow two separate rules—Rules 2.21 and 9.27. Rule 2.21 sets forth initial registration requirements, whereas Rule 9.27 sets forth the continuing education requirements that must be satisfied to maintain registration with the Corporation.

In order to simplify compliance for employees of ETP Holders, the Exchange proposes to provide continuing registration requirements in the same rule as initial registration requirements. Specifically, the Exchange proposes to add continuing education requirements to new Rule 2.21(d) and certain definitions and clarifications with respect thereto to new Commentary .01-.06 to Rule 2.21.

The continuing education requirements in proposed new Rule 2.21(d) and related Commentary .01-.06

<sup>4</sup> See NASD Rules 1070(d) and 1120(a) and (b) and New York Stock Exchange LLC ("NYSE") Rule 345A and Supplementary Material .15(1)(b) to NYSE Rule 345.

<sup>5</sup> In 2005, NYSE Arca (formerly Pacific Exchange, Inc.) became a participant of the CRD system for maintenance of certain registration categories with the Exchange. As part of this implementation, applicable rules of the Exchange were amended to address filing appropriate registration documentation electronically with the CRD system for employees of ETP Holders. These amended rules, however, inadvertently omitted certain registration procedures for positions not available on the CRD system.

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See NYSE Arca Equities Rule 1.1(n).