SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55423; File No. SR-NYSEArca-2007-21)

March 8, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Exemption from Certain of the Exchange's Shareholder Approval Requirements for Limited Partnerships

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on February 23, 2007, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposed rule change 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

NYSE Arca is proposing to exempt limited partnerships ("LPs") from the obligations to obtain shareholder approval for the issuance of common stock and related securities in the circumstances set forth in subsections (8) through (11) of NYSE Arca Equities Rule 5.3(d). The text of this proposed rule change is available on the Exchange's Web site (http://www.nyse.com/RegulationFrameset.html?displayPage=http://www.nysearca.com/nysearc

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4

4 15 U.S.C. 78s(b)(3)(A).

5 17 CFR 240.19b-4(f)(6).

a_reg/prf.asp), at the Exchange's Office of the Secretary, 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 changes and discussed any comments it received regarding the proposal. 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

NYSE Arca is proposing to exempt limited partnerships ("LPs") from the obligations to obtain shareholder approval for the issuance of common stock and related securities in the circumstances set forth in subsections (8) through (11) of NYSE Arca Equities Rule 5.3(d).[6] The proposed amendment does not affect investors in any currently listed company, as there are currently no LPs listed on the Exchange.

Subsections (8) through (11) of NYSE Arca Equities Rule 5.3(d) require listed issuers to obtain shareholder approval prior to the issuance of designated securities in the following situations:

[6] This filing does not in any way limit the applicability of the provisions of NYSE Arca Equities Rule 5.2(i) to limited partnership rollups (as defined in Section 14(h) of the Securities Exchange Act of 1934) or the continued applicability of any other rule that is currently applicable to LPs.

- Issuances that will result in a change of control of the issuer.

- In connection with the acquisition of the stock or assets of another company, shareholder approval is needed in the following circumstances:

    - if any director, officer, or substantial shareholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction (or series of related transactions) and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

    - where the present or potential issuance of common stock, or securities convertible into or exercisable for common stock (other than in a public offering for cash), could result in an increase in outstanding common shares of 20% or more or could represent 20% or more of the voting power outstanding before the issuance of such stock or securities.

- In connection with a transaction other than a public offering involving:

    - the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value, which together with sales by officers, directors or principal shareholders of the company equals 20% or more of presently outstanding common stock, or 20% or more of the presently outstanding voting power; or

    - the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of presently outstanding stock or voting power for less than the greater of book or market value of the stock.

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. Nasdaq has essentially identical shareholder approval requirements to those of the NYSE Arca. However, Nasdaq exempts LPs from those requirements,[7] which has placed NYSE Arca at a significant disadvantage in competing with

[7] See Nasdaq Marketplace Rule 4360 ("Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships"), which does not include the shareholder approval

Nasdaq for initial public offerings and transfers of LPs. 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 on an opportunistic basis and pay for them by issuing additional LP units. 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 a significant advantage over NYSE Arca in attracting and retaining listings of LPs.

The Exchange believes 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. 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 partnership agreements generally 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,

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requirements found in Nasdaq Marketplace Rule 4350 ("Qualitative Listing Requirements for Nasdaq Issuers That Are Not Limited Partnerships"). See also Exchange Act Release No. 30811 (June 15, 1992); 57 FR 28542 (June 25, 1992) (SR-NASD-91-58) (approving the NASD's adoption of non-quantitative listing standards for partnerships, which did not include shareholder approval requirements). See also Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994) (SR-NASD-93-3) (approving the NASD's adoption of the predecessor rule to Rule 4360, which also did not include shareholder approval requirements for listed limited partnerships).

investors who buy LP units have no expectation that they will be able to vote and, therefore, 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, 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. Rather, an LP would 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. A failure to pay the minimum quarterly distribution, or a reduction in the actual distribution level historically paid, would likely, in the Exchange's view, have a negative effect on the trading price of a listed LP, imposing a market discipline on management to ensure that any additional issuances will not be economically dilutive.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will increase competition among listing markets and will remove a competitive disadvantage the Exchange currently has vis a vis Nasdaq and is therefore designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

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

Because the proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b-4(f)(6) thereunder.[11]

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.

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10 15 U.S.C. 78s(b)(3)(A).

11 17 CFR 240.19b-4(f)(6).

A proposed rule change normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b-4(f)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30 day operative delay is consistent with the protection of investors and the public interest.[14] The Commission notes that because there are no LPs presently listed on the NYSE Arca, there are no shareholders retroactively or currently impacted by the proposed rule change. Further, the proposed rule change will eliminate the competitive disadvantage to the NYSE Arca resulting from the present disparity in shareholder approval requirements between the NYSE Arca's and Nasdaq's treatment of LPs, while still retaining for NYSE Arca-listed LPs the provisions of the Exchange's rules relating to shareholder approval of equity compensation plans.[15]

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12 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

13 17 CFR 240.19b-4(f)(6)(iii).

14 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

15 See NYSE Arca Rule 5.3(d)(1)-(7) (setting forth the Exchange's rules with respect to shareholder approval of equity compensation plans). The proposed rule change would only eliminate the application of subparagraphs (8) through (11) to Rule 5.3(d) to limited partnerships. The Commission believes that it is desirable for the Exchange to have retained the requirements pertaining to shareholder approval of equity compensation plans for NYSEArca-listed limited partnerships.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2007-21 on the subject line.

Paper Comments:

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

All submissions should refer to file Number SR-NYSEArca-2007-21. 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. Copies of such filings will also 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-NYSEArca-2007-21 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon
Deputy Secretary

[16] 17 CFR 200.30-3(a)(12).