

particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>79</sup> which requires, among other things, that the rules of an 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.<sup>80</sup> NYSE Market's ownership interest in BIDS and the joint ownership of the Company by NYSE and BIDS raise similar concerns. The Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange holds an ownership interest in a member or is affiliated with one of its members.

Nevertheless, in view of the conditions described above, the Commission believes that it is consistent with the Act to permit the proposed exceptions to NYSE Rule 2B. These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. FINRA will conduct member regulation of BIDS and—if trading volume from the facility grows sufficiently large and BIDS does not wish to reduce its ownership interest in the Company—might also be required to conduct market regulation of BIDS. Furthermore, NYSE's CRO will be provided quarterly reports of any alerts or investigations relating to BIDS. These conditions appear reasonably designed to promote robust and independent

regulation of BIDS. NYSE and BIDS also must establish and maintain procedures and internal controls that are reasonably designed to prevent BIDS and its affiliates from deriving any unfair informational advantage resulting from its affiliation with NYSE. Finally, NYSE has proposed that the exception from NYSE Rule 2B be on a pilot basis, which will provide NYSE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted. The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS and its regulatory responsibilities with respect to BIDS.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>81</sup> that the proposed rule change (SR-NYSE-2008-120) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>82</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-1806 Filed 1-27-09; 8:45 am]

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#### DEPARTMENT OF STATE

[Public Notice 6495]

##### Designation of Benefits Under the Foreign Missions Act; Diplomatic and Consular Exemption From Tobacco Excise Taxes

After due consideration of the benefits, privileges and immunities provided to missions of the United States under the Vienna Diplomatic and Consular Conventions and other governing treaties, and in order to facilitate relations between the United States and foreign governments, to improve or maintain the availability of tax exemption privileges for the United States, and by virtue of the authority vested in me under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, and Delegation of Authority No. 214, § 14, dated September 20, 1994, I hereby designate as a benefit under the Act, to be granted to foreign diplomatic and consular missions and personnel in the United States on the basis of reciprocity and as otherwise determined by the Department, to include personnel of

international organizations and missions to such organizations who are otherwise entitled to exemption from direct taxes, exemption from Federal and State or local excise taxes imposed with respect to tobacco products (as defined in 26 U.S.C. 5702) manufactured, packaged or sold in the United States. Procedures governing implementation of this benefit will be established by the Department of the Treasury.

**DATES:** *Effective Date:* January 28, 2009.

#### FOR FURTHER INFORMATION CONTACT:

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*Legal Information:* Susan Benda, 202-647-0308, [bendas@state.gov](mailto:bendas@state.gov).

Dated: January 14, 2009.

**Eric J. Boswell,**

*Ambassador, Director of the Office of Foreign Missions and Assistant Secretary for Diplomatic Security, Department of State.*

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#### DEPARTMENT OF STATE

[Public Notice 6496]

##### Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and to Initiate Consultation under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XI Pipeline

Public Notice

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** TransCanada Keystone Pipeline, L.P. (Keystone) has applied to the United States Department of State for a Presidential Permit authorizing the construction, operation, and maintenance of facilities at the border of the United States for the importation of petroleum from a foreign country. Authorization is being requested in connection with Keystone's proposed international pipeline project (the Keystone XL Project), which is designed to transport crude oil production from the Western Canadian Sedimentary Basin to existing markets in the Texas Gulf Coast area. The Department of State receives and considers applications for Presidential Permits for such energy-related pipelines pursuant to authority delegated to it by the President under Executive Order 13337 of April 30, 2004 (69 FR 25299), as amended. To issue a Permit, the Department of State must

<sup>79</sup> 15 U.S.C. 78f(b)(5).

<sup>80</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving combination of NYSE and Archipelago Holdings, Inc.); and 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62) (order approving acquisition of the American Stock Exchange by NYSE Euronext).

<sup>81</sup> 15 U.S.C. 78s(b)(2).

<sup>82</sup> 17 CFR 200.30-3(a)(12).