

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54126; File No. SR-NYSEArca-2006-31)

July 11, 2006

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the NYSE Arca, Inc. Amending Rules to Mandate Listed Companies Become Eligible to Participate in a Direct Registration System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on June 19, 2006, NYSE Arca, Inc. (“NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to amend its rules to mandate that all listed companies become eligible to participate in a Direct Registration System (“DRS”) administered by a clearing agency registered under Section 17A of the Act.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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

¹ 15 U.S.C. 78s(b)(1).

below. The NYSE Arca has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

(1) Purpose

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend its rules to mandate that all listed companies become eligible to participate in DRS administered by a clearing agency registered under Section 17A of the Act.

DRS is a system that allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position in eligible securities on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer.³ DRS, therefore, allows an investor to have eligible securities registered in her name without having a certificate issued to her and to electronically transfer, thereby eliminating the risk and delays associated with the use of certificates, her securities to her broker-dealer in order to effect a transaction.

In 2004, the Commission issued a concept release, Securities Transaction Settlement, discussing whether self-regulatory organizations ("SROs") that list securities should adopt rules

² The Commission has modified portions of the text of the summaries prepared by the NYSE Arca.

³ Currently, the only registered clearing agency operating a DRS is The Depository Trust Company ("DTC"). For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR-DTC-99-16] (order approving implementation of the Profile Modification System).

to require issuers to participate in DRS.⁴ Subsequently, representations of the New York Stock Exchange, the NASDAQ Stock Market, the American Stock Exchange, DTC, and the Securities Industry Association entered into discussions that resulted in the decision to propose common rules that would require listed companies to become eligible to participate in DRS but would not require listed companies to participate in DRS.⁵ There is an expectation that requiring listed companies to be eligible to participate in DRS will accelerate the trend already evident among companies to participate in DRS.

Under the proposed rule change, NYSE Arca will impose its DRS eligibility requirement pursuant to proposed new Rule 7.62(c).⁶ The proposed new rule does not require that securities listed for trading on NYSE Arca must be eligible for the DRS. Rather it requires listed companies' securities be eligible for a direct registration system operated by a clearing agency, as defined in Section 3(a)(23) of the Act,⁷ that is registered with the Commission pursuant to Section 17A(b)(2) of the Act. Therefore, while the DRS operated by DTC is currently the only DRS facility meeting the definition, proposed new Rule 7.62(c) could provide issuers with the option of using another qualified DRS if one should exist in the future.

⁴ Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7-13-04].

⁵ The Commission has published notices for proposed rule changes filed by the New York Stock Exchange LLC, NASDAQ Stock Market LLC, and the American Stock Exchange LLC that would require certain listed companies securities become DRS eligible. Securities Exchange Act Release Nos. 53912 (May 31, 2006), 71 FR 33030 (June 7, 2006) [File No. SR-NYSE-2006-29]; 53913 (May 31, 2006), 71 FR 33024 (June 7, 2006) [File No. SR-NASDAQ-2006-008]; and 53911 (May 31, 2006), 71 FR 33009 (June 7, 2006) [File No. SR-Amex-2006-40].

⁶ The exact text of the NYSE Arca prepared rule change is set forth in its filing, which can be found at www.nysearca.com/regulation/filings.

⁷ 15 U.S.C. 78a.

Currently, in order to make a security DRS-eligible in DRS operated by DTC, the issuer must have a transfer agent which is a DTC DRS Limited Participant.⁸ NYSE Arca understands that the larger transfer agents serving NYSE Arca's listed company community are already eligible to participate in DRS. However, taking into account the diversity of the issuers and transfer agents across all the markets that will be required to make securities eligible for DRS and facilitate DRS eligibility, some transfer agents may need to take steps to become eligible to participate in DRS, and some issuers may decide to change their transfer agent. In addition, NYSE Arca has been notified that some issuers may need to amend their certificates of incorporation or their by-laws before they can make their securities DRS eligible.

To allow sufficient time for any such necessary actions, NYSE Arca proposes to impose the DRS eligibility requirement in two steps. Companies listing for the first time should have greater flexibility to conform to the eligibility requirements; therefore, proposed Rule 7.62(c) would require all securities initially listing on NYSE Arca on or after January 1, 2007, be eligible for DRS at the time of listing. This provision does not extend to securities of companies (i) which already have securities listed on the NYSE Arca, (ii) which immediately prior to such listing had securities listed on another registered securities exchange in the U.S., or (iii) which are specifically permitted under NYSE Arca's rules to be and which are book-entry only. On and after January 1, 2008, all securities listed on the NYSE Arca will be required to be eligible for DRS except those securities which are specifically permitted under NYSE Arca rules to be and which are book-entry only. The securities which NYSE Arca permits to be book-entry only

⁸ DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15].

include all debt securities, securities listed or traded pursuant to Rule 5.2(j), securities listed or traded pursuant to Rule 8, and nonconvertible stock.⁹

(2) Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁰ NYSE Arca believes that the proposed new Rule 7.62(c) is consistent with its obligations under Section 6(b)(5) because issuers will be encouraged to use DRS, which should facilitate reducing the use of securities certificates and in turn should promote more efficient clearing and settling of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

⁹ NYSE Arca's Rule 5(j) pertains to, among other things, equity linked notes, investment company units, index-linked exchangeable notes, equity gold shares, index-linked securities. Rule 8 pertains to currency and index warrants.

¹⁰ 15 U.S.C. 78f(b)(5).

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

The NYSE Arca has neither solicited nor received written comments on the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-29 in [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-2006-31. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE Arca and on the NYSE Arca's Web site, www.nysearca.com. 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-2006-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).