

In particular, the Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Exchange Act,²² which requires that the rules of the exchange be designed, among other things, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that amending Exchange Rules 104 and 123E is consistent with the requirements of Section 6(b)(5) because the amendments are designed to more closely align net liquid asset requirements with a specialist organization's risks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,²³ that the proposed rule change (File No. SR-NYSE-2005-38), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54189; File No. SR-NYSEArca-2006-17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of the Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return Pursuant to Unlisted Trading Privileges

July 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 16, 2006, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have

been prepared by the Exchange. On July 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

Through NYSE Arca Equities, the Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to unlisted trading privileges ("UTP") the Index-Linked Securities ("Securities") of Barclays Bank PLC ("Barclays"), which are linked to the performance of the Dow Jones—AIG Commodity Index Total Return ("Index"). The Exchange also proposes new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate the trading of the Securities. The text of the proposed rule change is included below. Proposed new language is *italicized*.

* * * * *

Rule 5.2(j)(6)

Index-Linked Securities

Introductory Paragraph and Sections (a)–(k)—No change.

Commentary:

.01 *The provisions of this Commentary apply only to Index-Linked Securities listed and/or traded under this Rule where the price of such Index-Linked Securities is based in whole or part on the price of (i) a commodity or commodities; (ii) any futures contracts or other derivatives based on a commodity or commodities; or (iii) any index based on either (i) or (ii) above (an "Index") ("Commodity Index-Linked Securities"). Commodity Index-Linked Securities listed and/or traded under this Rule may have a term of up to 30 years.*

(a) *An ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such*

Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Commodity Index-Linked Securities, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, "derivative instruments") based on the Index or based on any Index component or any physical commodity underlying an Index component. However, an approved person of an ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Commodity Index-Linked Securities on another market center, in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component.

(b) *The ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities must file with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Commodity Index-Linked Securities shall trade in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.*

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the proposed rule text and amended the purpose section to provide (i) that the Securities have a term of 30 years; (ii) that the Information Bulletin will include a description of the Commission's no-action relief; and (iii) an amended description of the Exchange's surveillance procedures regarding the Securities. The changes in Amendment No. 1 have been incorporated into this Notice and Order.

(c) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g., Rule 4.4), the ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, as may be requested by the Corporation.

(d) In connection with trading in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Commodity Index-Linked Securities), the ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component.

* * * * *

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 III 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

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to UTP the Securities of Barclays, which are linked to the performance of the Index. Barclays intends to issue the Securities under the name "iPathSM Exchange-Traded Notes." The Exchange also proposes new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate the trading of the Securities. The New York Stock Exchange, Inc. ("NYSE") filed with the Commission a rule proposal for the original listing and trading of the Securities,⁴ and the proposal was approved on May 25, 2006.⁵

(a) The Securities and the Index

(i) The Securities

In August 2005, the Commission approved NYSE Arca Equities Rule 5.2(j)(6), which provides general standards for the listing and trading of "Index-Linked Securities."⁶ Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. As permitted in NYSE Arca Equities Rule 5.2(j)(6), the Exchange is submitting this rule proposal to the Commission pursuant to Section 19(b)(2) of the Act,⁷ to obtain Commission approval to trade the Securities pursuant to UTP.

A description of the Securities and the Index is set forth in the NYSE Proposal.⁸ The Securities are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index, subject to the adjustments described below.

The Securities will not have a minimum principal amount that will be repaid and, accordingly, payment on the Securities prior to or at maturity may be

less than the original issue price of the Securities. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Security at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee,⁹ the investor will receive less, and possibly significantly less, than the \$50 principal amount per Security. In addition, holders of the Securities will not receive any interest payments from the Securities. The Securities will have a term of 30 years and are not callable.¹⁰

Holders who have not previously redeemed their Securities will receive a cash payment at maturity equal to the principal amount of their Securities times the index factor¹¹ on the Final Valuation Date¹² minus the investor fee on the Final Valuation Date.

Prior to maturity, holders may, subject to certain restrictions, redeem their Securities on any Redemption Date¹³ during the term of the Securities provided that they present at least 50,000 Securities for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Securities for redemption with other investors' Securities. If a holder chooses to redeem

⁹ The investor fee is equal to 0.75% per year times the principal amount of a holder's Securities times the index factor, calculated on a daily basis in the following manner. The investor fee on the date of issuance of the Securities will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Securities times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Securities.

¹⁰ Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission and John Carey, Assistant General Counsel, NYSE Group, Inc. on July 12, 2006 ("July 12 Telephone Conference") (confirming the Securities are not callable).

¹¹ The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Securities (the "Trade Date") and the "final index level" is the closing value of the Index on the Final Valuation Date.

¹² The "Final Valuation Date" is the last Thursday before maturity of the Securities.

¹³ A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Securities until the last Thursday before the Final Valuation Date inclusive (or, if such date is not a trading day, the next succeeding trading day).

⁴ See Securities Exchange Act Release No. 53639 (April 12, 2006), 71 FR 20741 (April 21, 2006) (SR-NYSE-2006-16) (the "NYSE Proposal").

⁵ See Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (the "NYSE Order").

⁶ See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

⁷ 15 U.S.C. 78s(b)(2).

⁸ See supra note 4.

such holder's Securities, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of such holder's Securities times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. To redeem their Securities, holders must instruct their broker or other person through whom they hold their Securities to follow certain procedures as described in the NYSE Proposal.¹⁴

If an event of default occurs and the maturity of the Securities is accelerated, Barclays will pay the default amount in respect of the principal of the Securities at maturity. More information regarding default procedures, including a quotation period and an objection period, is set forth in the NYSE Proposal.

(ii) The Index

The Index, which was introduced in July 1998, is designed to be a diversified benchmark for commodities as an asset class. The Index reflects the returns that are potentially available through an unleveraged investment in the futures contracts on physical commodities traded on trading facilities in major industrialized countries comprising the Index plus the rate of interest that could be earned on cash collateral invested in specified Treasury Bills.¹⁵ The Index currently is composed of the prices of 19 exchange-traded futures contracts on physical commodities, namely aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and zinc. Futures contracts on the Index are currently listed for trading on the Chicago Board of Trade ("CBOT"). The Index is a proprietary index that AIGI International Inc. developed and that Dow Jones & Company, Inc. ("Dow Jones"), in conjunction with AIG Financial Products Corp. ("AIG-FP"), calculates. More information regarding the operation, calculation methodology,

weighting, and historical performance of the Index is set forth in the NYSE Proposal.

(b) Dissemination and Availability of Information

(i) The Intraday Indicative Value

According to the NYSE Proposal, an "Intraday Indicative Value" (or "IIV") meant to approximate the intrinsic economic value of the Securities will be calculated and published via the facilities of the Consolidated Tape Association every 15 seconds from 9:30 a.m. to 4 p.m. Eastern Time ("ET") on each day on which the Securities are traded on the NYSE.¹⁶ Additionally, Barclays or an affiliate will calculate and publish the closing IIV of the Securities on each trading day at <http://www.ipathetn.com>. In connection with the Securities, the term "IIV" refers to the value at a given time determined based on the following equation: $IIV = \text{Principal Amount per Unit (\$50)} \times \text{Current Index Level} \div \text{Initial Index Level}$ ¹⁷ minus Current Investor Fee.¹⁸

The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4 p.m. ET. The value of the Securities may accordingly be influenced by non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the IIV can be expected to closely approximate the redemption value of the Securities. However, during NYSE Arca Marketplace trading hours when the futures contracts have ceased

trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Securities and their redemption value. The Exchange stated that the IIV should not be viewed as a real time update of the redemption value.

(ii) The Index

According to the NYSE Proposal, Dow Jones disseminates the updated Index value approximately every 15 seconds (assuming the Index value has changed within such 15 second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET, on each DJ-AIG Business Day¹⁹ on Reuters page AIGCII.²⁰ The Index value can still be retrieved after 3 p.m. ET until the end of the Exchange trading day. Its value is generally static after 3 p.m. ET, although it may change if settlement values for Index components become available after that time.

(c) UTP Trading Criteria

The Exchange will cease trading in the Securities during the listing market's trading hours if: (i) The listing market stops trading the Securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the underlying Index is no longer available; or (ii) the listing market delists the Securities. In the event that the Exchange is open for business on a day that is not a DJ-AIG Business Day, the Exchange will not permit trading of the Securities on that day. Additionally, the Exchange may cease trading the Securities if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange's existing rules governing the trading of equity securities. Trading in

¹⁴ If holders elect to redeem their Securities, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Securities for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Securities if Barclays Capital Inc. fails to purchase the Securities. Any Securities purchased by Barclays Capital Inc. may remain outstanding.

¹⁵ These returns are calculated by using the 91-day U.S. Treasury Bill auction rate, designated as "High Rate" as published in the "Treasury Security Auction Results" report, published by the Bureau of the Public Debt currently available on its Web site (www.publicdebt.treas.gov/AI/AIGateway), which is generally published once per week on Monday.

¹⁶ The IIV calculation will be provided for reference purposes only. It is not intended as a price or quotation, or as an offer or solicitation for the purchase, sale, redemption or termination of the Securities, nor does it reflect hedging or transaction costs, credit considerations, market liquidity, or bid-offer spreads. Published Index levels from the index sponsors may occasionally be subject to delay or postponement. Any such delays or postponements will affect the Current Index Level (defined below) and therefore the IIV of the Securities. Index levels provided by the index sponsors will not necessarily reflect the depth and liquidity of the underlying commodities markets. For this reason and others, the actual trading price of the Securities may be different from their IIV.

¹⁷ The Current Index Level is the most recent published level of the Index as reported by Dow Jones and AIG-FP, whereas the Initial Index Level is the Index level on the trade date for the Securities.

¹⁸ The Current Investor Fee is the most recent daily calculation of the investor fee with respect to the Securities, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

¹⁹ A DJ-AIG Business Day is a day on which the sum of the commodity index percentages (as set forth in the NYSE Proposal) for the Index commodities that are available to trade is greater than 50%.

²⁰ The Index's Oversight Committee (defined and described in more detail in the NYSE Proposal) may exclude any otherwise eligible contract from the Index if it determines that it has an inadequate trading window. The Index currently includes contracts traded on the London Metal Exchange ("LME"), which is located in London. During the hours where the LME is closed, Dow Jones uses the last price and uses the settlement price once it is available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on the LME.

the Securities on the Exchange will occur from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a).²¹ The Exchange has appropriate rules to facilitate transactions in the Securities during all trading sessions. The minimum trading increment for Securities on the Exchange will be \$0.01.

Further, the Exchange is proposing new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Securities to facilitate surveillance. Commentary .01(b)–(c) to NYSE Arca Equities Rule 5.2(j)(6) will require that the ETP Holder acting as a registered Market Maker in the Securities provide the Exchange with necessary information relating to its trading in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, “derivative instruments”) based on the Index or based on any Index component or any physical commodity underlying an Index component. Commentary .01(d) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Securities). In addition, Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from being affiliated with a market maker in the Index

components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Securities. Trading in the Securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Securities inadvisable. These may include: (i) The extent to which trading is not occurring in the Index components; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule²² or by the halt or suspension of the trading of the Index components.²³

The Securities will be deemed “Eligible Listed Securities,” as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (“ITS”) Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance

The Exchange’s surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities in all trading sessions and to detect violations of Exchange rules, thereby deterring manipulation.

The Exchange’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange will be able to obtain information regarding trading in the Securities and the Index components

through ETP Holders in connection with such ETP Holders’ proprietary or customer trades which they effect on any relevant market. In addition, the Exchange can obtain market surveillance information with respect to transactions occurring on the LME, including customer identity information, pursuant to a memorandum of understanding with the LME. The Exchange has access to transaction information, including customer identity information, with respect to all contracts traded on the New York Mercantile Exchange (“NYMEX”) pursuant to the Exchange’s information sharing agreement with NYMEX. All of the other trading venues on which current Index components are traded, such as CBOT, are members of the Intermarket Surveillance Group, and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Securities. Specifically, the Information Bulletin will discuss the following: (i) The procedures for redemptions of Securities (and that Securities are not individually redeemable but are redeemable only in aggregations of at least 50,000 Securities); (ii) NYSE Arca Equities Rule 9.2(a),²⁴ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Securities; (iii) how information regarding the IIV is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Securities prior to or concurrently with the confirmation of a transaction (either in the initial distribution or during any

²¹ During all NYSE Arca Equities trading sessions, the Exchange represents that if the official Index Sponsor calculates an updated Index value, then such value will be updated and disseminated at least every 15 seconds during such trading session, and always will be so during the Exchange’s core trading session (although during this session, the Exchange may rely on the listing exchange to monitor such calculation and dissemination). The Exchange represents that the official Index Sponsor calculates and disseminates the Index value from 8 a.m. to 4 p.m. ET. Because this product is not in continuous distribution, an IIV is not required to be disseminated at least every 15 seconds in all trading sessions; however, because of the weekly redemption process for this product, such dissemination of the IIV is required during the Exchange’s core trading session. The Exchange may rely on the listing market to monitor such dissemination of the IIV during the Exchange’s core trading session. July 12 Telephone Conference.

²² See NYSE Arca Equities Rule 7.12.

²³ See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Securities.

²⁴ The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

subsequent distribution); and (v) trading information.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn and wheat, or the futures contracts on which the value of the Securities is based.

The Information Bulletin will also detail the terms of no-action positions taken by the Commission staff in connection with the Securities with respect to Section 11(d)(1) of the Act, Rule 10a-1 under the Act, Rule 200(g) of Regulation SHO and Rules 101 and 102 of Regulation M.

2. Statutory Basis

The Exchange believes that the basis for this proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act²⁵ that an exchange have rules that 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 facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act²⁶ because it deems the Securities to be equity securities, thus rendering the Securities subject to the Exchange's rules governing the trading of equity securities for the Securities.²⁷

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 purposes 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. 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 an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2006-17 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-2006-17. 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 filing also will be available for inspection and copying at the principal offices 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-2006-17 and should be submitted on or before August 21, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁹ which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,³⁰ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.³¹ The Commission notes that it previously approved the listing and trading of the Securities on NYSE.³² The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,³³ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSE Arca Equities rules deem the Securities to be equity securities, thus trading in the Securities will be subject to the Exchange's rules governing the trading of equity securities and the specific rules set forth herein for this product class.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁴ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Securities, the Exchange has made the following representations:

²⁸ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78f(f).

³¹ Section 12(a) of the Act, 15 U.S.C. 78f(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

³² See NYSE Order, *supra* note 5.

³³ 17 CFR 240.12f-5.

³⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ 15 U.S.C. 78s(b)(5).

²⁶ 17 CFR 240.12f-5.

²⁷ July 12 Telephone Conference (the Exchange requested that the Commission delete the word "existing" to clarify that the Securities will be subject to all applicable Exchange rules governing the trading of equity securities for the Securities).

1. NYSE Arca Equities has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. NYSE Arca Equities surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange.

3. NYSE Arca Equities will distribute an Information Bulletin to its members prior to the commencement of trading of the Securities on the Exchange that explains the terms, characteristics, and risks of trading such securities.

4. NYSE Arca Equities will require a member with a customer who purchases newly issued Securities on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Securities if: (1) The primary market stops trading the securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because an updated dissemination of the IIV or Index value at least every 15 seconds has ceased; or (2) if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) the primary market delists the Securities.

This approval order is conditioned on NYSE Arca Equities' adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Securities on the NYSE is consistent with the Act.³⁵ The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁶ that the proposed rule change (NYSEArca-2006-17), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12148 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Harbert Mezzanine Partners II SBIC, L.P. (License No. 04/04-0298); Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners II SBIC, L.P. One Riverchase Parkway South, Birmingham, Alabama, 35244, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, *Financings Which Constitute Conflicts of Interest of the Small Business Administration* ("SBA") rules and regulations (13 CFR 107.730 (2003)). Harbert Mezzanine Partners II SBIC, L.P. proposes to provide loans to APC Work Force Solutions, LLC (DBA Zero Chaos), 111 N. Orange Ave, Suite 1400, Orlando FL, 32801. The financing is contemplated for the acquisition of another staffing company.

The financing is brought within the purview of Sec. 107.730 (a) (1) of the Regulations because Harbinger Mezzanine Partners, L.P., an Associate of Harbert Mezzanine Partners II SBIC, L.P., currently owns greater than 10 percent of APC Work Force Solutions, LLC (DBA Zero Chaos), and therefore, APC Work Force Solutions, LLC (DBA Zero Chaos), is considered an Associate of Harbert Mezzanine Partners II SBIC, L.P. as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: July 13, 2006.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E6-12145 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10535]

California Disaster #CA-00037 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 07/21/2006.

Incident: Ferguson Rockslide.

Incident Period: 04/29/2006 and continuing.

Effective Date: 07/21/2006.

EIDL Loan Application Deadline Date: 04/23/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mariposa.

Contiguous Counties:

California, Madera, Merced, Stanislaus, Tuolumne.

The Interest Rate is: 4.000 percent.

The number assigned to this disaster for economic injury is 105350.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59002)

Steven C. Preston,

Administrator.

[FR Doc. E6-12150 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10538]

Delaware Disaster #DE-00002

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for

³⁵ See NYSE Order, *supra* note 5.

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).