Sentinel Fund or its advisor, underwriter or affiliates absent any waivers.

21. Applicants state that the substitution and selection of the Fidelity Fund and the DWS Fund was not motivated by any financial consideration paid or to be paid to NLIC or its affiliates by the Fidelity Fund or the DWS Fund or their respective advisor, underwriters or affiliates.

Applicants' Legal Analysis

1. Applicants state that the proposed substitution is a substitution within the meaning of Section 26(c) of the Act, which requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive commission approval before substituting the securities held by the trust.

2. Applicants note that the prospectuses disclose that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one series of an investment company held by a subaccount for another series, including a series of a different investment company, when, among other things, in NLIC's judgment the investment in such series is inappropriate.

3. Applicants assert that the proposed substitution will provide Contract owners a sufficiently similar investment strategy considering the opportunity for lower expenses and greater economies of scale. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

4. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitution as they have been with the array of subaccounts offered prior to the substitution. Applicants' assert that the proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts.

5. Applicants assert that the proposed substitution is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner that permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise her or his own judgment and transfer accumulation and contract values into other subaccounts.

6. Applicants note that the Contracts will offer Contract owners an opportunity to transfer amounts out of the Sentinel Fund, prior to the substitution, or the Fidelity Fund or DWS Fund, as applicable, after the substitution, into any of the remaining subaccounts without cost or other disadvantage. The proposed substitution, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

7. The Applicants note that within five days after the proposed substitution, Contract owners affected by the substitution will be sent a written notice informing them that the substitution was carried out and that, for the next 30 days, they may make one transfer of all accumulated or contract value under a Contract invested in the Fidelity Fund or the DWS Fund, as applicable, on the date of the notice to another subaccount available under their Contract without the transfer counting as one of a limited number of transfers permitted in a Contract year free of charge.

8. Applicants state the proposed substitution in also unlike the type of substitutions which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitution.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–7641 Filed 9–13–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54410; File No. SR–NYSEArca–2006–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Amending Rules to Mandate Listed Companies Become Eligible To Participate in a Direct Registration System

September 7, 2006.

I. Introduction

On June 19, 2006, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NYSEArca–2006–31 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on July 18, 2006.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.[4]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[5] DRS, therefore, enables an investor to have securities registered in her name on the books of the issuer without having a securities certificate issued to her and to electronically transfer her

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

[2] Securities Exchange Act Release No. 54126 (July 11, 2006), 71 FR 40768 (July 18, 2006) [File No. SR–NYSEArca–2006–31].

[3] Letter from Loren K. Hanson, Director of Investor Relations, to Nancy M. Morris, Secretary, Commission (August 15, 2006).

[4] The Commission has also granted approval to similar rule changes submitted by the New York Stock Exchange LLC (''NYSE''), American Stock Exchange LLC (''Amex''), and The NASDAQ Stock Market LLC (''Nasdaq''). Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; and 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40].

[5] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed 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).

securities to her broker-dealer in order to effect a transaction without the risk and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

In order to reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates and thereby reduce the risks, costs, and delays associated with the physical delivery of securities certificates, 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 be in the DRS operated by DTC. 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 requirements of new NYSE Arca Rule 7.62(c), the new rule will provide issuers with the option of using another qualified DRS if they so desire if one should exist in the future.

Currently, in order to make a security DRS-eligible in DRS operated by DTC, DTC rules require that 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. In addition, NYSE Arca has been notified that some issuers may need to amend their corporate governing documents, such as 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 will 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, Rule 7.62(c) will 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.[9] 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.

III. Comment Letters

The Commission received one comment opposing the proposed rule change.[10] The commenter, speaking on behalf of an issuer that acts as its own transfer agent but works with a large commercial transfer agent that acts as co-transfer agent, expressed concern the proposed rule change would eliminate the issuer's role as transfer agent. The commenter believes that there can be only one transfer per company registered with DTC under the current DRS model, and since the issuer is not a DRS Limited Participant, its co-transfer agent would survive as the issuer's only transfer agent. The commenter believes that implementation of NYSE Arca's proposed rule would be a detriment because shareholders would not receive the quality of service from a commercial transfer agent that they currently receive from the issuer acting as its own transfer agent. Furthermore, this commenter contends that forcing companies to implement DRS is unproductive and costly because issuers will have to amend their bylaws and articles of incorporation to allow for book-entry positions even when the issuer intends to continue to issue stock certificates.

IV. Discussion

Section 6(b)(5) of the Act 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11] For the reasons described below, the Commission finds that NYSE Arca's rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[12] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and present the risk of certificates being lost, stolen, or forged. Many of these costs and risks are ultimately borne by investors.[13] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission responsibility and authority to address these issues.[14]

Consistent with its Congressional directives and in its efforts to improve efficiencies and decrease risks associated with processing securities

[6] The exact text of the NYSE Arca proposed new Rule 7.62(c) is set forth in its filing, which can be found at *www.nysearca.com/regulation/filings.*

[7] 15 U.S.C. 78a.

[8] Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[9] The securities that NYSE Arca permits to be book-entry only 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. 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] *Supra* note 3. But *see* comment letters to similar rule changes submitted by the New York Stock Exchange LLC (''NYSE''), American Stock Exchange LLC (''Amex''), and The NASDAQ Stock Market LLC (''Nasdaq''). Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; and 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–20].

[11] 15 U.S.C. 78f(b)(5).

[12] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[13] *Id.*

[14] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilization or dematerialization of securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities [15] and that require any security listed for trading must be depository eligible if possible.[16] More recently the Commission has approved the implementation and expansion of DRS.[17]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (mostly by retail customers of broker-dealers) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to address this issue, NYSE Arca's rule change, along with those of the NYSE, Amex, and Nasdaq, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the physical delivery of securities certificates should be reduced, and impediments to the perfection of the national market system should be reduced. Additionally, those investors holding securities in listed securities covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make an issue DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participant and may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced costs and risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers and their transfer agents sufficient time to make any necessary changes to comply with the rule change.

While the proposed rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

The commenter's concern that its role as an issuer transfer agent will be eliminated because there can be only one transfer agent per issue registered with DTC under the current DRS model is unfounded. DTC has procedures in place to permit a named transfer agent, which in this case would be the issuer, to file notice with DTC as the primary transfer agent but use a co-transfer agent for its DRS functions.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with NYSE Arca's obligation under Section 6(b) of the Act 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.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. *It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSEArca–2006–31) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15229 Filed 9–13–06; 8:45 am]

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[15] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[16] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[17] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or is included in DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54413; File No. SR–Amex–2006–72]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform for Equity Products and Exchange Traded Funds

September 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.