

For the Nuclear Regulatory Commission.  
**Eric S. Beckjord,**  
*Director, Office of Nuclear Regulatory  
 Research.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35194; File No. SR-NYSE-94-47]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Extension of the Hedge Exemption Pilot Program

January 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The NYSE proposes to amend NYSE Rule 704, "Position Limits," to extend until May 17, 1995, the Exchange's pilot program for position limit exemptions for certain hedged (1) equity option positions; and (2) broad-based index option positions.<sup>1</sup>

The text of the proposals are available at the Office of the Secretary, NYSE, and at the Commission.

#### 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 self-regulatory organization 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 below.

<sup>1</sup> Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

The self-regulatory organization 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

##### (a) Purpose

On March 14, 1990, the Commission approved, on a pilot basis, amendments to NYSE Rule 704 providing (1) an exemption from equity option position limits for certain equity option positions that are fully hedged and (2) an exemption from the broad-based index option position limits for certain hedged broad-based index option positions.<sup>2</sup>

On July 12, 1991, the Commission approved both (1) an expansion of the scope of the exemptions to include short positions in the underlying hedged portfolio and to allow the underlying hedged portfolio to include securities that are readily convertible into common stock, and (2) an extension of the termination date of the pilot program.<sup>3</sup>

On September 14, 1993, the Commission approved both (1) an expansion of the equity option position limit hedge exemption to include "securities readily converted into or economically equivalent to that number of shares of such stock" as the basis for the exemption and (2) an extension of the termination date of the pilot program.<sup>4</sup>

On November 17, 1993, the Commission approved an extension of the termination date of the pilot program until November 17, 1994.<sup>5</sup> The Exchange now proposes to extend the pilot program for six months to May 17, 1995.

Early in 1995, the Exchange plans to submit to the Commission a report on the pilot program covering the period ending December 31, 1994. In addition, for the duration of the pilot program, the NYSE will continue to monitor on a daily basis (1) the use of the exemptions to determine if the positions are being maintained in accordance with all

<sup>2</sup> See Securities Exchange Act Release No. 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving File No. SR-NYSE-89-09).

<sup>3</sup> See Securities Exchange Act Release No. 29436 (July 12, 1991), 56 FR 33317 (July 19, 1991) (order approving File No. SR-NYSE-91-19).

<sup>4</sup> See Securities Exchange Act Release No. 32901 (September 14, 1993), 58 FR 49073 (September 21, 1993) (order approving File No. SR-NYSE-92-23).

<sup>5</sup> See Securities Exchange Act Release No. 33212 (November 17, 1993), 58 FR 62173 (November 24, 1993) (order approving File Nos. SR-Amex-93-38, SR-CBOE-93-52, SR-NYSE-93-42, SR-PSE-93-30, and SR-PHLX-93-46).

conditions and requirements and (2) the effects of the exemptions on the market.

##### (b) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed 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 system, and, in general, to protect investors and the public interest.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program until May 17, 1995, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.<sup>6</sup> The Commission concludes, as it did when originally approving the pilot program, that providing for increased position and exercise limits for equity options and stock index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

<sup>6</sup> 15 U.S.C. 78f(b)(5) (1982).

The Commission also notes that before the NYSE's pilot program can be extended or approved on a permanent basis, the Exchange must provide the Commission with a report on the operation of its pilot program since its inception by January 31, 1995. Specifically, the Exchange must provide the Commission details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently the convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any violation of any term or condition of the pilot program; (7) the market impact, if any of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program. In addition, the Commission expects the Exchange to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of its position limit hedge exemption rules.

The Commission finds good cause for approving the extension of the pilot programs prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot program. The Commission notes that the Exchange has not experienced any significant problems with the pilot program since its inception and that the Exchange will continue to monitor the pilot program to ensure that no problems arise. Finally, no adverse comments have been received by the Exchange or the Commission concerning the pilot program. Based on the above, the Commission believes good cause exists to approve the extension of the pilot program through May 17, 1995, on an accelerated basis. Therefore, the Commission believes that granting accelerated approval of the proposal is appropriate and consistent with Sections 6 and 19(b)(2) of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 1, 1995.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-94-47) relating to an extension of the hedge exemption pilot program until May 17, 1995, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland**,  
*Deputy Secretary.*

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#### [File No. 1-9453]

#### Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ark Restaurants Corp., Common Stock, \$.01 Par Value)

January 5, 1995.

Ark Restaurants Corp. ("company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security commenced trading on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS") at the opening of business on December 1,

1994 and concurrently therewith such stock was suspended from trading on the Amex.

The Company believes that the NASDAQ/NMS multiple market maker approach will provide the Company with higher visibility within the financial community, thereby enhancing investor awareness of the Company's activities;

In addition, the Company believes NASDAQ/NMS will provide brokers and others with immediate access to the bid and ask prices, plus other information about the Security throughout the trading day, will result in increased visibility and sponsorship of the Security, and will offer shareholders greater liquidity than presently offered on the Amex.

Any interested person may, on or before January 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

**Jonathan G. Katz**,  
*Secretary.*

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#### [Rel. No. IC-20817; 812-9016]

#### AVESTA Trust, et al.; Notice of Application

January 4, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for Exemption Under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** AVESTA Trust ("AVESTA"), including all existing and future series thereof, and any future management investment companies and series thereof that are advised by Texas Commerce Bank, N.A. ("TCB") or any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with TCB (the "Portfolios"); and TCB and any entity controlling, controlled by, or under common control (as defined in section

<sup>7</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1993).