

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).