

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52974; File No. SR-NYSE-2005-88)

December 16, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Waiver of Initiation Fees Charged to New Lessee Members

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 December 13, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 14, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which render the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Exchange Rule 301 to waive the initiation fees charged to new lessee members upon lease of an Exchange seat. The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment dated December 14, 2005 (“Amendment No. 1”). In Amendment No. 1, the Exchange (i) added information to the purpose section to conform it to the proposed rule text; (ii) made changes to the Exchange’s 2005 Price List to conform it to the proposed changes to Exchange Rule 301; (iii) amended the rule text to indicate that the effective date for the waiver is December 13, 2005; and (iv) made technical changes.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 IV 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

The Exchange proposes to waive the initiation fees charged to lessee members upon a new lease of an Exchange seat.

Article II, Section 4 of the Exchange's constitution authorizes the Exchange's Board of Directors to impose by rule initiation fees on new lessee members. The Board has established an initiation fee for lessee members by its adoption of Supplementary Material .27 (Payments to be made on day of approval of transfer or lease and payments to be made prior to admission to membership) of Exchange Rule 301. Supplementary Material .27 of Exchange Rule 301 sets initiation fees for leased seats at an amount equal to 5% of the last contracted sale of a seat, subject to minimum and maximum fees of \$1,000 and \$5,000 respectively. As seat prices

⁵ 17 CFR 240.19b-4(f)(2).

currently exceed \$1,000,000, the current initiation fee for lessee members is the \$5,000 maximum.

On December 6, 2005, the members of the Exchange and the shareholders of Archipelago Holdings, Inc. (“Archipelago”) voted to approve a merger of the Exchange and Archipelago. It is anticipated that the merger will be consummated in early 2006 upon receipt of approval of the transaction from the Division of Market Regulation. Upon consummation of the merger, the Exchange and Archipelago will each become wholly owned subsidiaries of a new publicly traded company, NYSE Group, Inc., and members of the Exchange will exchange their membership interests for shares of NYSE Group and cash.

The Exchange believes it is appropriate to waive the initiation fees currently charged to lessee members who commence new leases on or after December 13, 2005. The initiation fees were established at a time when it was assumed that most new lessee members would lease a seat for a reasonable period of time and would amortize the cost of the initiation fee over that period. As new leases at this time are likely to have a duration of only a matter of weeks, that will no longer be the case. As such, the Exchange believes that it is equitable to waive the initiation fee at this time.

In addition to amending Exchange Rule 301 in the manner described above, the Exchange is making a corresponding change to page 11 of the Exchange 2005 Price List to indicate that initiation fees will no longer be charged in connection with the commencement of new leases. References in page 11 of the Exchange 2005 Price List to “transfer fees” are intended as references to the initiation fees established by Supplementary Material .27 of Exchange Rule 301.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁶ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ because it establishes or changes a due, fee or other charge applicable only to a member.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ At the request of the Exchange, the Commission added "applicable only to a member." Telephone conversation between John Carey, Assistant General Counsel, Exchange, and Kim Allen, Special Counsel, Commission, Division of Market Regulation, on December 16, 2005.

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in further of the purposes of the Act.¹⁰

IV. 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-NYSE-2005-88 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-88. 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

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 14, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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 the filing also will be available for inspection and copying at the principal office 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-NYSE-2005-88 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

Jonathan G. Katz
Secretary

¹¹ 17 CFR 200.30-3(a)(12).