

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54638; File No. SR-NYSEArca-2006-58)

October 23, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Regulatory Oversight Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 21, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 NYSE Arca. The Exchange filed Amendment No. 1 to the proposed rule change on October 20, 2006.<sup>3</sup> 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 NYSE Arca Rule 3.3 to provide that the Exchange’s Regulatory Oversight Committee (the “ROC”) shall be comprised of at least three Public Directors. The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.nysearca.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240. 19b-4.

<sup>3</sup> In Amendment No. 1, NYSE Arca revised the purpose section of the proposal to clarify the changes being proposed.

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, as amended, and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change NYSE Arca Rule 3.3 to provide that the ROC shall be comprised of at least three Public Directors.<sup>4</sup> The current rule provides that the ROC must be comprised of all of the Public Directors of the NYSE Arca, Inc.

The Exchange believes that setting the number of Public Directors on the ROC to three is appropriate given the recent merger of New York Stock Exchange, Inc. and Archipelago Holdings, Inc. pursuant to which the Exchange became an indirect wholly owned subsidiary of a newly formed entity, NYSE Group, Inc. (“NYSE Group”). It is the current intent of NYSE Arca to populate the NYSE Arca ROC with three NYSE Arca directors who are also directors of both the NYSE Group and NYSE Regulation, Inc.,<sup>5</sup> a wholly owned subsidiary of NYSE Group that provides regulatory services to both the Exchange and the other registered securities exchange

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<sup>4</sup> Section 3.02 of the Bylaws of NYSE Arca defines “Public Directors” as person from the public who will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.

<sup>5</sup> All of these persons meet the requirements of a Public Directors under the NYSE Arca rules.

that is a subsidiary of NYSE Group, New York Stock Exchange LLC. The Exchange believes that this particular overlap of directors will allow the Exchange to better manage regulatory issues across the organization.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)<sup>6</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market, 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 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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2006-58 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-2006-58. 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 Commissions 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 the filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2006-58 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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