

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67435; File No. SR-NYSEArca-2012-45)

July 13, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Its Rules to Reflect the Merger of Archipelago Holdings, Inc. (“Archipelago Holdings”), An Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating Archipelago Holdings From the Ownership Structure of the Exchange

I. Introduction

On May 14, 2012, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule changes to reflect the merger of Archipelago Holdings, Inc. (“Archipelago Holdings”), an intermediate holding company, into and with NYSE Group, Inc. (“NYSE Group”), thereby eliminating Archipelago Holdings from the ownership structure of the Exchange (the “Merger”). The proposed rule changes were published for comment in the Federal Register on May 31, 2012.³ The Commission received no comment letters on the proposal. The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ This order approves the proposed rule changes.

II. Description

NYSE Euronext intends to merge Archipelago Holdings with and into NYSE Group,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67058 (May 31, 2012), 77 FR 32155 (“Notice”).

⁴ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

effective following approval of the proposed rule change.⁵ According to the Exchange, the reason for the Merger is to eliminate an unnecessary intermediate holding company.⁶ Following the Merger, the Exchange would continue to be wholly-owned by NYSE Arca Holdings, which in turn would be wholly-owned by NYSE Group, which in turn would be wholly-owned by NYSE Euronext.

The Exchange has submitted its proposal to (i) amend and restate the Amended and Restated Certificate of Incorporation of NYSE Arca Holdings, Inc. (the “NYSE Arca Holdings Certificate”), (ii) amend and restate the NYSE Arca Holdings, Inc. Bylaws (“NYSE Arca Holdings Bylaws”) as required by the NYSE Arca Holdings Certificate, (iii) amend the rules of NYSE Arca and NYSE Arca Equities, Inc. (iv) delete in its entirety the Amended and Restated Certificate of Archipelago Holdings (“Archipelago Holdings Certificate”), (v) delete in its entirety the Amended and Restated Bylaws of Archipelago Holdings (“Archipelago Holdings Bylaws”) and (vi) file the resolution (the “Resolution”) of the Board of Directors of NYSE Arca Holdings (the “Board”) in connection with the Merger.

Section 19(b) of the Act and Rule 19b-4 thereunder require a self-regulatory organization (“SRO”) to file proposed rule changes with the Commission. Although NYSE Arca Holdings and Archipelago Holdings are not SROs, the NYSE Arca Holdings Certificate, NYSE Arca Holdings Bylaws, Archipelago Holdings Certificate, and Archipelago Holdings Bylaws, along with other corporate documents, are rules of the Exchange⁷ and must be filed with the

⁵ Currently, NYSE Arca Holdings, Inc. (“NYSE Arca Holdings”) owns all of the equity interest of the Exchange. Archipelago Holdings owns all of the equity interest of NYSE Arca Holdings, and NYSE Group owns all of the equity interest of Archipelago Holdings. NYSE Euronext owns all of the equity interest of NYSE Group.

⁶ See Notice, 77 FR at 32156.

⁷ See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the Exchange filed the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws with the Commission, along with other corporate governance documents.⁸

A. Waiver of the NYSE Arca Holdings Ownership and Voting Limits

The NYSE Arca Holdings Certificate imposes certain ownership and voting restrictions on the shares of NYSE Arca Holdings. Specifically, Article 9, Section 1(b)(i) of the NYSE Arca Holdings Certificate provides that for so long as NYSE Arca Holdings directly or indirectly controls the Exchange, no Person either alone or together with its Related Persons,⁹ may own, directly or indirectly, of record or beneficially shares of the capital stock (whether common or preferred stock) of NYSE Arca Holdings constituting more than 40% of the outstanding shares of any class of capital stock of NYSE Arca Holdings (the “Ownership Limit”) unless the Board has adopted an amendment to the NYSE Arca Holdings Bylaws waiving such a restriction. In connection with such amendment, the Board must adopt resolutions stating that: such amendment will not impair the ability of the Exchange to carry out its functions and responsibilities under the Securities Exchange Act of 1934, as amended (the “Act”), and the rules thereunder; is otherwise in the best interests of NYSE Arca Holdings, its stockholders, and the

⁸ See proposed Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings, attached as Exhibit A to the Notice; proposed Amended and Restated Bylaws of NYSE Arca Holdings, attached as Exhibit B to the Notice. The Exchange also filed the proposed rule changes to its rules as well as the rules of NYSE Arca Equities, Inc., attached as Exhibit C to the Notice. The Exchange also proposes to delete the entirety of the Amended and Restated Certificate of Incorporation of Archipelago Holdings and the Amended and Restated Bylaws of Archipelago Holdings, attached as Exhibit D and Exhibit E, respectively, to the Notice. The Exchange also filed the Resolution made by the Board as Exhibit F to the Notice. These exhibits are available on the Commission’s website (<http://www.sec.gov/rules/sro.shtml>) and at the Commission’s Public Reference Room.

⁹ The terms “Person” and “Related Persons” are defined in the NYSE Arca Holdings Certificate.

Exchange; and will not impair the ability of the Commission to enforce the Act. Such amendment is not effective until approved by the Commission. The Board also must find that no such Person or Related Person is subject to a statutory disqualification under Section 3(a)(39) of the Act. Similarly, Article 9, Section 1(c) of the NYSE Arca Holdings Certificate provides that no Person, either alone or together with its Related Persons, may directly or indirectly vote more than 20% of the shares of NYSE Arca Holdings (the “Voting Limit”) unless the Board adopts an amendment to the NYSE Arca Holdings Bylaws waiving such a restriction and, in connection with such amendment, adopts resolutions and makes a determination with respect to statutory disqualification substantially the same as those described above for the Ownership Limit.¹⁰

The Board made these findings as set forth in the Resolution. The Board found, in pertinent part, that (1) the Merger will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules promulgated thereunder; (2) the Merger will not impair the ability of the Commission to enforce the Act; (3) neither NYSE Group nor any of its Related Persons is subject to any applicable “statutory disqualification” within the meaning of Section 3(a)(39) of the Act; and (4) neither NYSE Group nor any of its Related Persons is an ETP Holder of NYSE Arca Equities, Inc. or an OTP Firm of the Exchange, except as permitted by Article 9, Section 4 of the NYSE Arca Holdings Certificate.

The Exchange also proposes to amend the NYSE Arca Holdings Bylaws by adding a new Article 11 that sets forth the waiver of the Ownership and Voting Limits, as required by the NYSE Arca Holdings Certificate, solely for purposes of the Merger.

¹⁰ Article 9, Section 4 of the NYSE Arca Holdings Certificate currently provides certain exceptions to these ownership and voting restrictions for Archipelago Holdings.

B. Changes in Corporate Structure and Deletion of Duplicative or Obsolete Text

The proposed rule changes reflect the elimination of Archipelago Holdings from the Exchange's ownership structure and delete duplicative or obsolete text. For example, the Exchange proposes to replace references to Archipelago Holdings in Article 9, Section 4 of the NYSE Arca Holdings Certificate with references to NYSE Group. In addition, the Exchange proposes to delete the last sentence of that section, which relates to certain voting and ownership restrictions that were put in place when the Exchange combined with the New York Stock Exchange in 2005 but have been superseded by other requirements.¹¹

The Exchange proposes to delete in its entirety the text of the Archipelago Holdings Certificate and the Archipelago Holdings Bylaws because Archipelago Holdings will no longer exist upon consummation of the Merger. Accordingly, these documents will no longer be rules of the Exchange.¹²

¹¹ See Notice, 77 FR at 32156; see also Securities Exchange Act Release No. 55294 (Feb. 14, 2007), 72 FR 8046 (Feb. 22, 2007) (SR-NYSEArca-2007-05); see also Securities Exchange Act Release No. 55293 (Feb. 14, 2007), 72 FR 8033 (Feb. 22, 2007) (SR-NYSE-2006-120).

¹² Other changes include amending the NYSE Arca Holdings Bylaws to change references to the Pacific Exchange, Inc. to NYSE Arca, Inc.; changing references to PCX Holdings, Inc. to NYSE Arca Holdings; and deleting obsolete references to trading in minimum lots. The Exchange also proposes to delete NYSE Arca Rule 1.1(cc) and (gg), which set forth the definitions for Archipelago Holdings and Related Person, and to delete NYSE Arca Rule 3.4, which sets forth ownership and voting restrictions for Archipelago Holdings. Upon the elimination of Archipelago Holdings, NYSE Group would be the next holding company, and voting and ownership restrictions are currently set forth in its Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc. ("NYSE Group Certificate") in Article IV, Section 4(b). NYSE Arca Equities Rule 14.3(b) provides that all officers and directors of Archipelago Holdings shall be deemed to be officers and directors of the Exchange and NYSE Arca Equities for purposes of, and subject to oversight pursuant to, the Act. NYSE Arca Equities Rule 14.3(d) provides that Archipelago Holdings must maintain all books and records related to the Exchange within the United States. The Exchange proposes to delete this text and make a conforming change to NYSE Arca Equities Rule 14.3(c). Comparable provisions are already contained in NYSE Group's governing documents. The Exchange notes that,

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal would accommodate the merger of Archipelago Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating Archipelago Holdings from the ownership structure of the Exchange. The Commission notes that the proposed rule changes would otherwise have no substantive impact on other rules of the Exchange, including those concerning the voting and ownership restrictions that currently apply to the Exchange and its affiliates.¹⁵ The Exchange would continue as an indirect wholly-owned subsidiary of NYSE Euronext. In addition, the Commission notes that the Board made certain findings set forth in

under Article IX of the NYSE Group Certificate, NYSE Group's directors and officers already are subject to the jurisdiction of the Commission, and under Article X, NYSE Group's books and records relating to the Exchange must be maintained within the United States. See Notice, 77 FR at 32156.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See supra note 11.

the Resolution that the direct ownership of NYSE Arca Holdings by NYSE Group as contemplated by the Merger is in the best interests of NYSE Arca Holdings, its shareholders, and the Exchange. In addition, the Board found that neither NYSE Group, nor any of its Related Persons, is (1) an ETP Holder of NYSE Arca Equities, Inc. (except as otherwise permitted by the NYSE Arca Holdings Certificate) (2) an OTP Holder of the Exchange (except as otherwise permitted by the NYSE Arca Holdings Certificate); or (3) subject to any “statutory disqualification.”¹⁶

In light of these representations and findings, the Commission believes that the proposed rule changes are consistent with the Act and will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

¹⁶ See Resolution.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSEArca-2012-45) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).