

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54008; File No. SR-NYSE-2006-43)

June 16, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 902.02 of the Listed Company Manual to Exempt Companies Transferring from NYSE Arca from Initial Listing Fees and the Annual Fee for the Year of Such Transfer

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 7, 2006, the New York Stock Exchange LLC (the “NYSE” or the “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 NYSE. 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

NYSE proposes to amend Section 902.02 of its Listed Company Manual (“Manual”) to provide that there shall be no initial listing and no prorated annual fee payable with respect to the first partial calendar year of listing for any company listed on NYSE Arca, Inc. (“NYSE Arca”) that transfers the listing of its primary class of common shares to the Exchange. The text of the proposed rule change is available at the Commission, at NYSE, and at [www.nyse.com](http://www.nyse.com).

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. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in

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

<sup>2</sup> 17 CFR 240.19b-4.

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

New York Stock Exchange, Inc. and Archipelago Holdings, Inc. merged on March 7, 2006, leading to the creation of a new public holding company, NYSE Group, Inc. ("NYSE Group"). As a result of the merger, NYSE Group is the ultimate parent of two national securities exchanges, the Exchange and NYSE Arca.<sup>3</sup>

NYSE Group expects that companies that do not yet meet the Exchange's initial listing criteria will list first on NYSE Arca and will subsequently transfer their listing to the Exchange if and when they qualify to do so. Consistent with this approach, the Exchange proposes to amend Section 902.02 of the Manual to grant companies transferring the listing of their primary class of common shares to the Exchange from NYSE Arca a waiver of the Exchange's initial listing fees and the prorated annual listing fee payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as companies transferring to the Exchange from NYSE Arca will already have paid annual continued listing fees to NYSE Arca for the calendar year in which they transfer, as well as the initial listing fee payable under NYSE Arca's rules at the time of initial listing on NYSE Arca. In addition, the Exchange notes that NYSE Regulation performs listed company regulation for both the Exchange and NYSE Arca, including a substantial review of companies upon original listing. Companies transferring from NYSE Arca will be subjected to the same rigorous regulatory review as any other applicant

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<sup>3</sup> See Securities Exchange Act Release No. 53382 (SR-NYSE-2005-77) (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77)(approving organizational changes in connection with the merger).

for listing on the Exchange. However, the Exchange expects that, on average, the review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from the Nasdaq National Market (“Nasdaq”) or the American Stock Exchange, as NYSE Regulation will already have performed a substantial review of any NYSE Arca listed company and will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange.

The primary purpose of the proposed fee waiver is to assist in the development of NYSE Arca as a listing market. NYSE Group intends to build NYSE Arca into an alternative listing venue for companies whose only realistic listing option is currently Nasdaq because they do not meet the Exchange’s own listing standards due to their small size or insufficient operating history. NYSE Arca intends to adopt a new set of listing standards with thresholds broadly comparable to those of Nasdaq and expects to compete directly with Nasdaq for initial public offerings that do not qualify for the Exchange. However, NYSE Group recognizes that, as a new market, NYSE Arca will initially face difficulties in attracting new listings. NYSE Group believes that NYSE Arca’s affiliation with the Exchange through their common parent is highly attractive to companies considering listing on NYSE Arca. Companies whose ultimate objective is to list on the Exchange can associate themselves with NYSE Group by listing on NYSE Arca at the time of their initial public offerings. NYSE Group believes that many companies will consider this preferable to listing initially on Nasdaq and then transferring to the Exchange upon achieving the Exchange’s listing standards and that the Exchange’s proposed fee waiver will appeal to companies considering listing on NYSE Arca because of its association with the Exchange. By increasing NYSE Arca’s attractiveness as a listing venue, the Exchange believes the fee waiver will lead to greater competition for new listings, as it will help NYSE Arca

become a viable alternative to Nasdaq, which does not currently have any meaningful competition for new listings that do not qualify for the Exchange. NYSE Group is willing to forego the listing fee revenues from NYSE Arca transfers because it believes that a significant market opportunity exists for NYSE Arca to compete successfully with Nasdaq. However, NYSE Group does not wish to waive transfer fees for transfers from all other markets as it views initial listing fees as an important source of revenue. If the Exchange decides to reimpose these fees with respect to transfers from NYSE Arca in the future, it will do so by filing a proposed rule change with the Commission.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(4)<sup>4</sup> and 6(b)(5) of the Act<sup>5</sup> that an exchange have rules that (i) provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and (ii) are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and are not designed to permit unfair discrimination between issuers. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory. The Exchange expects that, on average, the review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from Nasdaq or the American Stock Exchange, as NYSE Regulation will already have performed a substantial review of any NYSE Arca listed company and will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange. The Exchange believes that, by making NYSE Arca a

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<sup>4</sup> 15 U.S.C. 78f(b)(4).

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

more attractive listing venue, the proposed fee waiver will assist NYSE Arca in competing with Nasdaq for listings and is therefore designed to perfect the mechanism of a free and open market.

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 were neither solicited nor received by NYSE.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-43 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-43. 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 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 such 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-2006-43 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>6</sup>

Nancy M. Morris  
Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).