

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52891; File No. SR-NYSE-2005-83)

December 5, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Certificate of Incorporation, Constitution and Rules to Allow Limited Liability Companies to Become Members and Related Changes to the Exchange's 2005 Price List

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 November 28, 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 and II below, which Items have been prepared by the Exchange. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 5, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Exchange has designated this proposal as "non-controversial"

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated December 1, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange (i) modified the Purpose section to match the proposed rule text; (ii) amended the proposed changes to the Exchange Certificate of Incorporation and included a description of such proposed changes in the Purpose section; and (iii) made technical changes.

⁴ See Partial Amendment dated December 5, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange (i) clarified the purpose section to match the proposed rule text; (ii) made changes to the Exchange's 2005 Price List; (iii) deleted a paragraph in Section III of Exhibit 1; and (iv) made technical changes.

pursuant to Section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders the proposed rule change 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 (i) to amend the Exchange's Constitution to allow limited liability companies ("LLCs") to become members of the Exchange, (ii) a related amendment to the Exchange's Certificate of Incorporation, (iii) an amendment to Exchange Rule 301 to implement the admission to membership of LLCs under certain limited circumstances in order to facilitate estate planning by individual members, and (iv) an amendment to the Exchange's 2005 Price List to reflect an application fee to be charged to new LLC members and to waive the Exchange's transfer fee payable in connection with the transfer of a leased seat, if the new lease is entered into solely as a result of a transfer to an LLC pursuant to proposed Exchange Rule 301(e). Under the proposed rule change, transfers of LLC membership interests would be prohibited other than transfers (i) to Family Members,⁷ (ii) to grantor retained annuity trusts ("GRATs") established for estate and tax planning purposes, (iii) by distribution of such interest by the trustee of each such a trust to any one or more of its beneficiaries (including a trust for the

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ For purposes of proposed Exchange Rule 301(e), the term "Family Member" means, with respect to any person, such person's spouse, domestic partner, children, stepchildren, grandchildren, parents, parents-in-law, grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

benefit of any one or more of them), or (iv) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees, in each case subject to certain additional limitations.

The text of the proposed rule change is 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

Amendment to Exchange Constitution and Certificate of Incorporation

At the Exchange's annual membership meeting on April 7, 2005, the members voted to amend the Exchange's Constitution to allow LLCs to be members of the Exchange in order to facilitate estate planning by individual members. The Exchange's Constitution currently restricts membership to natural persons. This restriction has had the effect of limiting members from being able to include memberships in estate planning.

The proposed amendment would allow members to place their seats into LLCs, allowing them to advance estate-planning objectives. The proposed amendment is also intended to prevent aggregation of control through LLCs, to maximize accountability, and to facilitate regulation and administration to the greatest extent possible.

Under the proposed amendment, only individuals who are already NYSE members would be permitted to form an LLC for the purpose of serving as a member of the Exchange. The amendment would not allow a non-member to form an LLC for the purpose of acquiring a membership.

When the LLC is admitted as a NYSE member, it must be wholly owned either by an individual who is a NYSE member or by the executor of his or her estate, and the LLC must own nothing other than a single NYSE membership, related membership revenues and, if applicable, contract rights with approved lessees. The LLC's trading rights cannot be exercised by anyone other than a lessee (who must be a broker-dealer or associated with a broker-dealer) who has been approved by the NYSE.

The death of the individual member who created the LLC would entitle the individual's family to receive a payment from the Gratuity Fund and will trigger an obligation among the other members to contribute to the Gratuity Fund. Only when the LLC's membership is again owned by an individual, and that individual passes away, would there be a further obligation for the Gratuity Fund to make any payments in respect of that membership. However, so long as the LLC owns the membership, the LLC would be required to contribute to the Gratuity Fund on the same terms as any other NYSE member, except that a limited transfer member (as defined below) would not have to make any contribution to the Gratuity Fund upon the death of the

limited transferor (as defined below) from whom the limited transfer member received its membership.

LLCs admitted as NYSE members would be subject to such additional limitations as the Exchange's Board of Directors may impose by rule.

At the Exchange's 2005 annual members' meeting, the membership also voted to make conforming amendments to the Exchange's Certificate of Incorporation. The proposed amendments to the Exchange's Certificate of Incorporation would permit ownership of Exchange memberships by persons other than natural persons, provided such persons are permitted to own memberships under the Exchange's Constitution and rules. The proposed amendments to the Exchange's Certificate of Incorporation are being made to enable LLCs to be members of the Exchange and would also permit the Exchange in the future to amend its Constitution and Rules to create other classes of membership without any further amendment to its Certificate of Incorporation. The proposed amendments do not eliminate or limit in any way the possible existence of electronic access members or annual members having physical access to the floor.

Implementing Rules

Many Exchange members have asked the Exchange's Board of Directors and management to amend the Exchange's Rules in light of the Constitutional authority the members granted the Exchange's Board at the 2005 annual members' meeting to permit the transfer of seats to LLCs. The desire to transfer seats to LLCs for estate and tax planning purposes has been greatly enhanced by the Exchange's execution of a merger agreement with Archipelago Holdings, Inc., upon consummation of which membership interests in the Exchange will be exchanged for shares of a new publicly traded holding company, NYSE Group, Inc. Anticipating

that the value of memberships could increase substantially if and as various merger uncertainties are resolved favorably – including the votes on December 6, 2005 of the Exchange members and the Archipelago shareholders, and approval of the transaction by the Division of Market Regulation – members are anxious for the Exchange to make the necessary rule changes as quickly as possible, to allow the transfers to be made before the full appreciation is reflected in the market price of membership interests.

Proposed Exchange Rule 301(e) would implement the amendment to the Constitution with respect to a narrow category of LLCs. Under the proposed rule change, transfers of LLC membership interests will be prohibited other than transfers (i) to Family Members,⁸ (ii) to GRATs established for estate and tax planning purposes, (iii) by distribution of such interest by the trustee of each such a trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (iv) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees, in each case subject to certain additional limitations. The proposed rule is designed to provide members with increased estate and tax planning options. The Exchange believes that it achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estates and the Exchange's interest in regulating and protecting its membership. The proposed rule would impose certain additional restrictions and limitations on the member LLCs and would give the Exchange authority with respect to transfer of ownership interests in the member LLCs. The provisions of the proposed rule include the following:

⁸ See supra note 7.

- (a) a requirement that the Exchange approve any member LLC and its governing documents, as well as the dissolution of any member LLC and any amendments to LLC governing documents;
- (b) a prohibition against any transfer of Exchange membership by any member LLC (other than an indirect transfer by reason of the transfer of interests in the LLC permitted under (e) below) except with the prior written approval of the Exchange;
- (c) a prohibition against any member LLC holding any asset other than a single Exchange membership, related revenues and, if applicable, contract rights with an approved lessee;
- (d) a prohibition against transfer of interests in any member LLC which transfer creates or changes “control interests” in the LLC except with Exchange approval;
- (e) prohibition against any transfer of any equity, voting or ownership interest in the company other than a transfer (A) by bequest or lifetime gift by the Limited Transferor⁹ to any one or more of the Limited Transferor’s Family Members (provided that no such Family Member transferee shall have a veto right with respect to the removal or replacement of the manager by the owner of the majority

⁹ For purposes of proposed Exchange Rule 301(e), the term “Limited Transferor” shall mean the individual who was the Exchange member who initially contributed his or her membership to the company, thereby causing it to become a limited transfer member of the Exchange within the meaning of its Constitution.

- in interest of the company or any matters pertaining to any Reorganization¹⁰),
- (B) by lifetime gift by the Limited Transferor to one or more Qualified Trusts,¹¹ each of which has not more than one Trustee and is governed by a trust instrument that has been certified to the Exchange by authorized legal counsel of the Limited Transferor to contain the provisions that would cause the trust held under the instrument, if the instrument were duly executed, to be at the time of initial funding a grantor retained annuity trust, or GRAT, in which the Limited Transferor, commonly known as the grantor, retains a qualified interest as defined in Section 2702(b) of the Internal Revenue Code of 1986, as amended, (C) by distribution of such interest by the Trustee of each such a trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (D) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees;
- (f) a prohibition against any transfer of member LLC interests, if such transfer would result in any individual, corporation, partnership, company, or trust owning, directly or indirectly, a controlling interest (as “control” is described under Exchange Rule 2, taking into account equity, voting or ownership interests owned

¹⁰ For purposes of proposed Exchange Rule 301(e), the term “Reorganization” shall mean any merger of the Exchange (or any successor entity) with, or any sale of all or substantially all of the assets of the Exchange (or any successor entity) to, another entity, such that any entity other than the Exchange shall either directly or indirectly hold a majority of the equity of the Exchange or all or substantially all of the assets of the Exchange. For the avoidance of doubt, a Reorganization shall include the Exchange’s merger with Archipelago Holdings, Inc.

¹¹ The term “Qualified Trust” shall mean a trust solely for the benefit of the Limited Transferor and/or the Limited Transferor’s Family Members.

by fiduciaries only to the extent they are acting as trustee of a trust created by a Family Member or the estate fiduciary of an individual who was a family member) if (i) the transferee is a member of the Exchange or (ii) following such transfer, the transferee would own, directly or indirectly, controlling interests in more than three LLCs that are limited transfer members of the Exchange;

- (g) a prohibition against any member LLC having more than one manager or permitting any person other than the manager to take actions on behalf of the LLC;
- (h) qualifications for member LLC managers;
- (i) no liability of the NYSE in connection with member LLCs and a requirement that member LLCs (and persons holding interests in member LLCs) indemnify the NYSE with respect to claims; and
- (j) an application to become a limited transfer member shall be subject to the posting and payment requirements provided in Exchange Rule 301(d) and .26 and .27 of the Supplementary Materials to Exchange Rule 301, except that no more than five days need elapse between the posting of a notice of a proposed transfer to a proposed limited transfer member under proposed Exchange Rule 301(e) and the consideration thereof rather than the ten days provided in Exchange Rule 301(d) and .26 of the Supplementary Materials to Exchange Rule 301.

The restrictions and limitations included in the proposed rule are intended to give the Exchange broad controls with respect to members that are not individuals while accommodating members' planning objectives.

LLC Application Fees

Currently, the Exchange charges an application fee in the amount of \$2,500 to membership applicants who are not associated with members or member organizations.¹² It is proposed that the Exchange's Board of Directors establish an application fee in the amount of \$5,000 in view of the additional costs to the Exchange in connection with memberships held by LLCs. The proposed LLC application fee would be in lieu of the \$2,500 application fee referred to in the first sentence of this paragraph. The proposed LLC application fee, like the \$2,500 application fee payable in other cases, is in addition to the initiation fee payable by new members.¹³ Fees payable in connection with transfers to an LLC are separate from, and in addition to, fees payable in connection with the acquisition of a membership by the person who transfers his or her membership to the LLC, and fees payable in connection with any lease of membership.

The Exchange will waive its transfer fee of up to \$5,000 payable in connection with the transfer of a leased seat, if the new lease is entered into solely as a result of a transfer to an LLC pursuant to proposed Exchange Rule 301(e).

¹² See Exchange 2005 Price List page 9, "Registration and Regulatory Fees," for the \$2,500 fee charged to non-public organizations and individuals.

¹³ The Exchange 2005 Price List and .27 of the Supplementary Material to Exchange Rule 301 set forth a transfer fee for purchased and leased seats of 5% of the purchase price or the last contracted sale, subject to a minimum of \$1,000 and a maximum of \$5,000.

2. Statutory Basis

The proposed changes are consistent with Sections 6(b)(4)¹⁴ and 6(b)(5)¹⁵ of the Act, in that they provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, and they are designed to promote just and equitable principles of trade, 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 and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. The proposed rule change is being made in response to requests received from a large number of Exchange members. The staff of the Exchange has worked with interested members and their legal advisors to draft a proposed rule that will accommodate members in pursuing their estate and tax planning objectives.

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

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

(3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁹ The Commission notes that the proposed rule would impose certain restrictions and limitations on the LLCs and would give the Exchange authority with respect to transfer of ownership interests in the LLCs. For instance, the trading rights associated with the membership transferred to the LLC cannot be exercised by anyone other than a lessee to whom the LLC has leased its membership (such lessee must be approved by the Exchange, pursuant to the Exchange's current requirements for lessees).²⁰ The Commission

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). The Exchange provided the Commission with written notice of the Exchange's intent to file the proposed rule change at least five business days prior to the filing date.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ See proposed Article II, Section 15(b) of the Exchange's Constitution.

further notes that other exchanges permit entities as well as individuals to own memberships.

The Commission believes that waiving the 30-day operative delay achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to establish LLCs as soon as possible for estate and tax planning purposes and preserving the Exchange's interest in regulating and protecting its membership.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²¹

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-2005-83 on the subject line.

²¹ 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 the period to commence on December 5, 2005, the date the Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(c)(3)(C).

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-2005-83. 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 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-2005-83 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.²²

Jonathan G. Katz
Secretary

²² 17 CFR 200.30-3(a)(12).