

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53354; File No. SR-NYSE-2006-08)

February 23, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .26 to Exchange Rule 301 to Waive the Posting Requirements in Relation to Transfers for Nominal Consideration Between Employees of the Same Member Organization and New Leases

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 February 17, 2006, the New York Stock Exchange, Inc. (“Exchange” or “NYSE”) 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. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

The Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

The text of the proposed rule changes 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

Article II, Section 10, of the Exchange Constitution authorizes the Exchange's board of directors to (i) approve the transfer of membership of a regular member and the lease of such a membership and (ii) adopt, amend and repeal such rules as it may deem necessary or proper relating to the posting of notice of the proposed transfer or lease of a membership and other similar matters. Supplementary Material .26 to Exchange Rule 301 sets forth the current posting requirements for transfers and leases of seats, requiring that a proposed transfer or lease of a membership must be posted on the Exchange's bulletin board and in the Exchange's Weekly Bulletin at least 10 days before board consideration of such transfer or lease.

A large percentage of Exchange memberships and leases of memberships are held on behalf of member organizations by individuals who are employees of those member organizations. When an employee who owns a membership on behalf of a member organization leaves that member organization, the member organization may instruct the employee to transfer

such membership to another employee of the member organization for a nominal consideration (“nominal transfer”). Similarly, if a lessee member leaves his member organization, the member organization may cause another employee to sign a new lease to enable the member organization to retain the departed employee’s floor trading rights.

On December 6, 2005, the members of the Exchange and the shareholders of Archipelago Holdings, Inc. (“Archipelago”) voted to approve a merger between the Exchange and Archipelago. Upon consummation of the merger, all membership interests in the Exchange will be exchanged for a combination of cash and common stock of NYSE Group, Inc. After the merger, the right to trade on the floor of the Exchange will be pursuant to a system of trading licenses. In light of the fact that memberships will cease to exist upon consummation of the merger and the time and resources it takes to process transfers and leases of membership, the Exchange announced that it would not process any transfers or new leases of memberships entered into after the close of business on Friday, December 30, 2005.

At the time the Exchange announced its decision to cease processing transfers of memberships and new leases, the Exchange believed that the merger would be completed before the end of January 2006. As completion of the merger has taken longer than anticipated, a backlog has developed of memberships beneficially owned by member organizations that are not available for use by such member organizations. This problem is a consequence of the inability of those member organizations to cause the nominal transfer to continuing employees of memberships held by departed employees so as to allow those continuing employees to transact business on the trading floor. Similarly, member organizations have been unable to execute new leases in the names of continuing employees when the employee who had been a lessee member on behalf of the member organization has departed. In addition, member organizations

frequently meet their expanding needs for trading floor personnel by causing employees to enter into new leases. The Exchange's decision not to process new leases has prevented member firms from expanding their floor trading capacity in this manner and has forced them to operate with fewer floor trading personnel than they consider desirable.

Some member organizations have experienced difficulty in effectively conducting their business as a result of this inability either to have employees admitted as members in place of departed employees or to acquire memberships by entering into new leases to expand their trading floor capacity. The Exchange has responded to this problem by recommencing the processing of nominal transfers and new leases.⁵ However, member organization personnel needs make it important to process these transfers and leases as quickly as possible. Therefore, the Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to nominal transfers and new leases, so as to shorten the process where an applicant is otherwise acceptable to the Exchange and ready for approval.

The Exchange believes that waiving the ten day notice period prior to Exchange approval of a transfer will provide significant relief to member organizations that need to replace departed employees on the trading floor, or expand their trading floor personnel, as quickly as possible. The Exchange intends this waiver for nominal transfers and leases to be of a limited duration and will reimpose the "posting" requirement if at any time the conditions that make such waiver necessary, as discussed above, no longer exist.

The purposes of the "posting" requirement are (i) to enable members to raise objections to the suitability of a proposed new member and (ii) to give notice to any member who may have a claim against the proceeds of the sale of the membership. As the "posting" process has not

⁵ All new leases are required to contain a provision specifying that they will terminate by their terms upon closing of the merger.

given rise to any objections to a proposed new member in many years and the Exchange performs a thorough background check as part of its approval process, the Exchange believes that waiving the “posting” requirement in the limited circumstances proposed by this filing will not meaningfully diminish the stringency of the new member approval process. Furthermore, the Exchange notes that there will be no “posting” procedure with respect to applicants for trading licenses under the rules that will be in effect after the consummation of the merger. In addition, since the only membership transfers that will be permitted are nominal transfers between employees of the same member organization, no true sale is occurring and there are therefore no proceeds for a third party to make claims against.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)⁶ of the Act that an Exchange have rules that 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.

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.

⁶ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ 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 five-day pre-filing requirement and the 30-day operative delay, and designate the proposed rule change immediately operative. The Commission believes that waiving the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.¹¹ The Commission notes that the Exchange represented that the posting process has not resulted in objections to a proposed new member in many years and the Exchange performs a thorough background check as part of its approval process for new members. The Commission also notes that the Exchange represented that the proposed waiver of the 10-day

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ Id.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 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).

posting period should provide relief to member organizations that, as a consequence of the backlog in processing membership transfers, need to replace departed employees on the trading floor, or expand their trading floor personnel, as quickly as possible to enable them to effectively conduct their business. Accordingly, the Commission designates that the proposal become operative immediately.

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 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.

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. Please include File Number SR-NYSE-2006-08 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-NYSE-2006-08. 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-2006-08 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.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).