

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-53472; File No. SR-NYSE-2006-18)**

**March 13, 2006**

**Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 104, Dealings by Specialists**

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 March 8, 2006, the New York Stock Exchange, LLC (“NYSE” or the “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. The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered the proposal effective upon filing with the Commission.<sup>5</sup> 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 NYSE Rules 104.12 and .13 concerning investment accounts and investment positions in specialty securities for securities issued by the Exchange. The text of the proposed rule change is available on NYSE’s Web site, <http://www.nyse.com>, at NYSE’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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NYSE has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).

## **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. 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**

NYSE Rule 104 (Dealings by Specialists) governs specialists’ dealings in their specialty securities. Trades conducted by a specialist in specialty securities are effected in the specialist’s dealer account. Under NYSE Rule 104.12, a specialist may assign part of his or her dealer account position to an investment account, provided that such assignment does not create a short position in the specialist’s dealer account.

Additionally, NYSE Rule 104.12 prohibits the assignment to the investment account of any position or part thereof that was purchased on nonstabilizing ticks, *i.e.*, a “plus” tick (at a price higher than the last trade) or “zero plus tick” (higher than the last different trade). In order to assign a position to an investment account, a specialist’s purchases in that security must be at least 75% stabilizing for that day and the calendar week encompassing the purchase of that security.

Similarly, positions in the dealer account are netted with positions in an investment account. Thus, if the specialist is short in the dealer account, but has a long position in the investment account that exceeds the short dealer position, the specialist is considered to be net long. In that situation, a specialist may not liquidate the short dealer account position by

purchasing on a plus tick; nor may the specialist purchase on a zero plus tick more than 50% of the stock that is being offered in the market at that time, and, in no event may the specialist purchase the final 100 shares offered.

NYSE Rule 104.13 requires that transactions effected in specialty stocks for the accounts of specified persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place, known as “tick” restrictions. The accounts specified in the rule include accounts of employees or parties active in the business of the specialist, the spouse or children residing in the same household as a specialist or person active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption pursuant to NYSE Rule 98 (Restrictions on an Approved Person Associated with a Specialist’s Member Organization).

#### NYSE-Archipelago Merger

The merger of NYSE and Archipelago Holdings, Inc. has received Commission approval and was completed on March 7, 2006.<sup>6</sup> Trading in the common stock of the newly-formed, publicly-traded holding company NYSE Group, Inc. on the Exchange will commence on March 8, 2006, under the symbol “NYX.”

Under the terms of the merger, members of the Exchange, i.e., seatholders on the NYSE, will receive shares of NYX stock in exchange for their membership interests. In certain circumstances, where the purchase of an Exchange membership was the subject of a financing arrangement with the member organization a seat holder was associated with, the member organization will be eligible to receive the NYX shares being exchanged for a membership.

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<sup>6</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77).

These NYX shares will be held in a special account separate from the specialist's dealer and investment accounts.

The NYX shares received as a result of this exchange will be subject to transfer restrictions set forth in the amended and restated Certificate of Incorporation of NYSE Group, Inc. These transfer restrictions prohibit any direct or indirect assignment, sale, exchange, transfer, tender or any other disposition of NYX shares. Except as otherwise provided in Article IV, Section 4 of the amended and restated Certificate of Incorporation, these restrictions are scheduled to expire after 12, 24, and 36 months subsequent to the issuance date of the shares, for one-third of the total shares after each such 12-month interval. The specialist organization will be informed by the transfer agent as to the specific date the restrictions will be lifted for each tranche. It is only when the restrictions are removed that these shares will be transferred to the specialist's dealer or investment account and will be fully subject to NYSE Rule 104.

Among those who will receive restricted NYX shares will be seaholders who are associated with the member organization which is registered as the specialist in NYX stock, and that specialist member organization itself.

#### Proposed Rule Change

The Exchange proposes to amend NYSE Rules 104.12 and .13 to exempt from these provisions any positions held by a specialist or his or her organization in a specialty security issued by NYSE Group, Inc. and listed on the NYSE which is restricted as to sale or transfer. This exemption will last during the pendency of such restriction as to sale or transfer. The Exchange believes that given that these shares cannot be used in the specialist's normal market making activities, the application of NYSE Rules 104.12 and .13 to these positions does not serve any useful purpose.

The provisions of NYSE Rule 104.12 are designed to permit specialists to establish investment positions in specialty securities while recognizing that all trading activity and positions in such specialty securities must be available for use in the specialist's dealer activities. The restrictions contained in NYSE Rule 104.13 help ensure that associated persons of specialists do not trade in a destabilizing manner any NYSE security in which the related specialist organization is registered. Since the shares of NYX that are to be received by the specialists, the specialist member organization and any associated parties in exchange for their membership interests will be, for all practical purposes, unable to be used in any manner until the restrictions described above are removed, the Exchange believes that it would be inappropriate to include them within the purview of NYSE Rules 104.12 and .13.

## **2. Statutory Basis**

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

## **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.

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

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.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Accordingly, a proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>10</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The NYSE has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 5-day pre-filing notice and

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest, because it allows the NYSE to implement this proposal as soon as possible upon the commencement of trading of NYX stock on March 8, 2006, and thereby accommodates the receipt and retention of restricted NYX shares by the specialist in a special account separate and apart from the specialist's dealer or investment accounts and addresses the treatment of such shares under NYSE Rule 104. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

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.<sup>13</sup>

#### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-18 on the subject line.

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<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> See 15 U.S.C. 78s(b)(3)(C).

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-2006-18. 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 will also be available for inspection and copying at the principal office of the NYSE. 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-2006-18 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).