INVESTMENT COMPANY INSTITUTE

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February 2, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
Station Place
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Proposed NYSE/Archipelago Merger (File No. SR-NYSE-2005-77)

Dear Ms. Morris:

The Investment Company Institute[1] is writing to comment on the New York Stock Exchange's proposed rule change relating to its proposed merger with Archipelago.[2] The Institute supports the proposed merger, as it would provide new trading opportunities for investors and should result in greater efficiencies for the NYSE. We recommend that certain changes be made to the proposed governance structure of the newly formed NYSE Group to help eliminate potential conflicts of interest between the for-profit entities comprising the NYSE Group and the NYSE's regulatory unit.

Proposed NYSE Governance Structure

As a result of the proposed merger, the businesses of the NYSE and Archipelago will be combined to form the NYSE Group – a for-profit, publicly-traded holding company consisting of three separate entities - New York Stock Exchange LLC ("NYSE LLC"), NYSE Market, and NYSE Regulation. NYSE LLC will be the parent company of the for-profit NYSE Market (which will be delegated the market functions of NYSE LLC) and the not-for-profit NYSE Regulation (which will be delegated the regulatory functions of NYSE LLC).

As the Institute has noted in the past,[3] an efficient and conflict-free regulatory structure is critical to our members, who are significant investors in securities. In order to achieve such a structure, there must be a strong separation between an exchange's market operations and other

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[1] The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is available at the end of this letter.

[2] Securities Exchange Act Release No. 53074 (January 6, 2006), 71 FR 2080 (January 12, 2006).

[3] *See, e.g.*, Letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 8, 2005 (File Nos. S7-39-04 and S7-40-04) (rule proposals and concept release relating to the examination of the operation and structure of self-regulatory organizations).

commercial interests and its regulatory unit. The proposed governance structure of the newly-formed NYSE must therefore promote, to the greatest extent possible, the ability of NYSE Regulation to carry out its regulatory responsibilities in the interest of investors separate and apart from any potential influences of the for-profit NYSE Group.

As proposed, a majority of the NYSE Regulation board would have consisted of members of the NYSE Group board. On January 20, the NYSE proposed to reduce the number of directors from the NYSE Group on the NYSE Regulation board from a majority to a minority.[4] While this change strengthens the independence of the governance structure of NYSE Regulation, we believe the NYSE should go further and, at the very least, increase the number of NYSE Regulation board members that are not members of the NYSE Group board to more than a simple majority.

The Institute also recommends that the NYSE adopt a requirement that a certain number of directors on the NYSE Group board, and on the various boards of the entities comprising the NYSE Group, be investor representatives. The proposal states that the nominating and governance committee of the NYSE Group board of directors will consider public investor recommendations for candidates for the NYSE Group board. There are no provisions in the proposal, however, requiring that any director on any of the boards of the newly-formed NYSE be investor representatives. As an important constituent of the NYSE, we believe the investor community should be provided a place on these boards.

Eliminate Inconsistent and Duplicative Market Rules

Amendment No. 6 to the proposed rule change states that the NYSE has undertaken to the Commission that it will work with NASD and securities firms to eliminate inconsistent rules and duplicative examinations. The amendment also states that the NYSE will use its best efforts, in cooperation with NASD, to submit to the Commission within one year proposed rule changes reconciling inconsistent rules and a report identifying those rules that have not been reconciled.

The Institute strongly supports this initiative. The simplification of the regulation of the securities markets is an important undertaking. Eliminating inconsistent and duplicative rules, especially those governing issues that go to the core of investor protection principles and that are designed to prevent violations of the securities laws (*e.g.*, rules relating to broker-dealer sales practices, margin requirements and financial condition), would be beneficial to the securities markets and investors. Given the importance of this initiative, we recommend that the NYSE, as soon as practicable, begin work with NASD to rectify concerns in this area and

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[4] *See* Amendment No. 6 to SR-NYSE-2005-77. Amendment No. 6 can be found on the NYSE's website at http://www.nyse.com/pdfs/NYSE-2005-77A-6.pdf. The amendment also reduces the number of members of the NYSE Regulation Nominating and Governance Committee that are also directors of NYSE Group from a majority to a minority and specifies that NYSE Regulation will have a compensation committee responsible for setting the compensation for NYSE Regulation employees, and that such committee will have a majority of non-affiliated directors.

that the Commission set forth a specific timeframe under which recommendations by the NYSE and NASD will be developed.

Brevity of Comment Period

The proposed rule change addresses the merger of two of the most significant U.S. trading venues. We are therefore disappointed by the brevity of the 21-day comment period provided under the proposal. As the Institute has noted in the past, a 21-day comment period for significant rule proposals often does not provide a meaningful opportunity for public comment. Given the complexity of this proposal, it also was extremely difficult to obtain comprehensive input from our members in such a short period of time.[5] We continue to urge the Commission to provide appropriate comment periods for significant rule filings to facilitate meaningful public comment and to make any amendments to such filings available to the public in a timely manner.

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If you have any questions regarding our comments on the proposed rule change, please contact the undersigned at 202-371-5408.

Sincerely,

/s/ Ari Burstein

Ari Burstein
Associate Counsel

cc: The Honorable Christopher Cox, Chairman
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Annette L. Nazareth, Commissioner

Robert L. D. Colby, Acting Director
Division of Market Regulation

Susan Wyderko, Acting Director
Division of Investment Management

[5] Preparing comments on the proposed rule change in such a short timeframe was complicated by the fact that Amendment No. 6 never appeared on the Commission's website and was never published for public comment.

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About the Investment Company Institute

The Investment Company Institute's membership includes 8,554 open-end investment companies ("mutual funds"), 654 closed-end investment companies, 162 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about $8.802 trillion. These assets account for 98% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 89.5 million, representing 52.6 million households. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 188 associate members, which render investment management services exclusively to non-investment company clients. These Institute members and associate members manage a substantial portion of the total assets managed by registered investment advisers.