

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53591; File No. SR-NYSEArca-2006-08)

April 4, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Certificate of Incorporation of NYSE Arca Holdings, Inc.

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 March 30, 2006, NYSE Arca, Inc. (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 proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ 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 hereby submits to the Commission a proposed rule change to further extend certain temporary exceptions from the voting and ownership limitations in the certificate of incorporation of NYSE Arca Holdings, Inc. (f/k/a PCX Holdings, Inc.)⁵ (“NYSE Arca Holdings”), a Delaware corporation and a parent company of the Exchange, originally approved

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).

⁵ See SR-PCX-2006-24.

by the Commission in an order issued on September 22, 2005 (the “SEC Order”)⁶ and extended pursuant to certain subsequent rule filings,⁷ so as to allow Gerald D. Putnam (“Mr. Putnam”), Chairman and Chief Executive Officer of Archipelago Holdings, Inc. (“Archipelago”), a Delaware corporation and a wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Group”), of which Mr. Putnam is also President and Co-Chief Operating Officer, to indirectly own in excess of 5% of Terra Nova Trading, L.L.C. (“TNT”) until May 15, 2006, subject to the conditions set forth in this proposed rule filing.

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

⁶ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (the “SEC Order”).

⁷ See Securities Exchange Act Release No. 53034 (December 28, 2005), 71 FR 636 (January 5, 2006) (the “First Extension Notice”); Securities Exchange Act Release No. 53202 (January 31, 2006), 71 FR 6530 (February 8, 2006) (the “Second Extension Notice”); and Securities Exchange Act Release No. 53411 (March 3, 2006), 71 FR 12413 (March 10, 2006) (the “Third Extension Notice”).

1. Purpose

a. NYSE Arca Holdings and the Amendment of the NYSE Arca Holdings Certificate of Incorporation

As a wholly-owned subsidiary of NYSE Group, Archipelago operates NYSE Arca Marketplace (formerly Archipelago Exchange or ArcaEx), an open, all-electronic stock market for the trading of equity securities. On September 26, 2005, Archipelago completed its acquisition of NYSE Arca Holdings (then known as PCX Holdings) and all of its wholly-owned subsidiaries, including the Pacific Exchange, Inc. (the predecessor entity of the Exchange) and PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.) (the “Acquisition”). On March 7, 2006, the merger of Archipelago and the New York Stock Exchange, Inc. (the “Archipelago NYSE Merger”) closed and, as a result, Archipelago became a wholly-owned subsidiary of NYSE Group.

The certificate of incorporation of NYSE Arca Holdings (as amended to date, the “NYSE Arca Holdings Certificate of Incorporation”) contains various ownership and voting restrictions on NYSE Arca Holdings’ capital stock, which are designed to safeguard the independence of the self-regulatory functions of the Exchange and to protect the Commission’s oversight responsibilities. In order to allow Archipelago to own 100% of the capital stock of NYSE Arca Holdings, prior to the completion of the Acquisition, the Exchange filed with the Commission a proposed rule change which sought to, among other things, amend the NYSE Arca Holdings Certificate of Incorporation to create an exception from the voting and ownership restrictions for Archipelago and certain of its related persons (the “Original Rule Filing”).⁸ The Original Rule

⁸ See File No. SR-PCX-2005-90 (August 1, 2005).

Filing, as amended by Amendment Nos. 1 and 2 thereto, was approved by the Commission on September 22, 2005⁹ and the amended NYSE Arca Holdings Certificate of Incorporation became effective on September 26, 2005, upon the closing of the Acquisition.

Article Nine of the NYSE Arca Holdings Certificate of Incorporation provides that no Person,¹⁰ either alone or together with its Related Persons,¹¹ may own, directly or indirectly, shares constituting more than 40% of the outstanding shares of any class of NYSE Arca Holdings capital stock,¹² and that no Person, either alone or together with its Related Persons

⁹ See SEC Order, *supra* note 6.

¹⁰ “Person” is defined to mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(iv).

¹¹ The term “Related Person,” as defined in the NYSE Arca Holdings Certificate of Incorporation, means (i) with respect to any person, all “affiliates” and “associates” of such person (as such terms are defined in Rule 12b-2 under the Act); (ii) with respect to any person constituting a trading permit holder of the Exchange or an equities trading permit holder of NYSE Arca Equities, any broker dealer with which such holder is associated; and (iii) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of NYSE Arca Holdings. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(iv).

¹² NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(i). However, such restriction may be waived by the Board of Directors of NYSE Arca Holdings pursuant to an amendment to the Bylaws of NYSE Arca Holdings adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Act and is otherwise in the best interests of NYSE Arca Holdings and its stockholders and the Exchange, and will not impair the ability of the Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission; provided that the Board of Directors of NYSE Arca Holdings shall have determined that such Person and its Related Persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act). NYSE Arca Holdings Certificate of Incorporation, Article Nine, Sections 1(b)(i)(B) and 1(b)(i)(C).

who is a trading permit holder of the Exchange or an equities trading permit holder of NYSE Arca Equities, may own, directly or indirectly, shares constituting more than 20% of any class of NYSE Arca Holdings capital stock.¹³ Furthermore, the NYSE Arca Holdings Certificate of Incorporation provides that, for so long as NYSE Arca Holdings controls, directly or indirectly, the Exchange, no Person, either alone or with its Related Persons, may directly or indirectly vote or cause the voting of shares of NYSE Arca Holdings capital stock or give any proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding NYSE Arca Holdings capital stock.¹⁴ The NYSE Arca Holdings Certificate of Incorporation also places limitations on the right of any Person, either alone or with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy.¹⁵

The Exchange proposed and the Commission approved an exception from the ownership and voting limitations described above to add a new paragraph at the end of Article Nine of the NYSE Arca Holdings Certificate of Incorporation, which provides that for so long as Archipelago directly owns all of the outstanding capital stock of NYSE Arca Holdings, these ownership and voting limitations shall not be applicable to the ownership and voting of shares of NYSE Arca Holdings by (i) Archipelago, (ii) any Person which is a Related Person of Archipelago, either alone or together with its Related Persons, and (iii) any other Person to which Archipelago is a Related Person, either alone or together with its Related Persons.¹⁶ These exceptions to the ownership and voting limitations, however, shall not apply to any

¹³ Id., Article Nine, Section 1(b)(ii).

¹⁴ Id., Article Nine, Section 1(c).

¹⁵ Id.

¹⁶ Id., Article Nine, Section 4.

“Prohibited Persons,”¹⁷ which is defined to mean any Person that is, or that has a Related Person that is (i) an OTP Holder or an OTP Firm (as defined in the rules of the Exchange)¹⁸ or (ii) an ETP Holder (as defined in the rules of NYSE Arca Equities),¹⁹ unless such Person is also a “Permitted Person” under the NYSE Arca Holdings Certificate of Incorporation.²⁰ The NYSE Arca Holdings Certificate of Incorporation further provides that any Prohibited Person not covered by the definition of a Permitted Person who is subject to and exceeds the voting and ownership limitations imposed by Article Nine as of the date of the closing of the Acquisition

¹⁷ Id.

¹⁸ The Exchange rules define an “OTP Holder” to mean any natural person, in good standing, who has been issued an Options Trading Permit (“OTP”) by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities, or has been named as a Nominee. Exchange Rule 1.1(q). The term “Nominee” means an individual who is authorized by an “OTP Firm” (a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange’s trading facilities) to conduct business on the Exchange’s trading facilities and to represent such OTP Firm in all matters relating to the Exchange. Exchange Rule 1.1(n).

¹⁹ NYSE Arca Equities rules define an “ETP Holder” to mean any sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the NYSE Arca Equities for effecting approved securities transactions on the trading facilities of NYSE Arca Equities. NYSE Arca Equities Rule 1.1(n).

²⁰ “Permitted Person” is defined to mean (A) any broker or dealer approved by the Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange; (B) any Person that has been approved by the Commission prior to it becoming subject to the provisions of Article Nine of the NYSE Arca Holdings Certificate of Incorporation with respect to the voting and ownership of shares of NYSE Arca Holdings capital stock by such Person; and (C) any Person that is a Related Person of Archipelago solely by reason of beneficially owning, either alone or together with its Related Persons, less than 20% of the outstanding shares of Archipelago capital stock. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 4.

shall be permitted to exceed the voting and ownership limitations imposed by Article Nine only to the extent and for the time period approved by the Commission.²¹

b. TNT

TNT is a wholly owned subsidiary of TAL Financial Services, LLC (“TAL”) and Mr. Putnam indirectly owns a 40% interest in TAL. Accordingly, Mr. Putnam indirectly owns in excess of 5% of TNT. The management committee of TAL performs on behalf of TNT the functions usually associated with a board of directors and executive committee of a corporation. Until the approval of the Third Extension Rule Filing (discussed below), Mr. Putnam was one of the five members of the TAL management committee (a position which Mr. Putnam resigned in accordance with the TNT Conditions (discussed below)). Because TNT, a broker-dealer and an ETP Holder of NYSE Arca Equities, is a Related Person of Archipelago by virtue of Mr. Putnam’s ownership of in excess of 5% of TNT, it falls within the definition of “Prohibited Persons” under the NYSE Arca Holdings Certificate of Incorporation. Consequently, absent an exception, Archipelago’s ownership of NYSE Arca Holdings would cause TNT to exceed the voting and ownership limitations imposed by Article Nine of the NYSE Arca Holdings Certificate of Incorporation. Therefore, in connection with the Acquisition, the Commission approved the Exchange’s request for a temporary exception for Mr. Putnam to continue to own in excess of 5% of TNT and continue to serve as a director of TAL until December 31, 2005 (the “Original TNT Exception”).²² In the SEC Order, the Commission stated that it believes that such a temporary exception is appropriate and consistent with the Act

²¹ Id.

²² See SEC Order, supra note 6, at 56960-61.

because it will eliminate the affiliation between TNT and Archipelago but allow Mr. Putnam a reasonable amount of time to effectuate such actions necessary to eliminate the affiliation.²³

Mr. Putnam has been working to eliminate the affiliation with TNT. In light of the fact that the sale of Mr. Putnam's interest in TNT was unlikely to be consummated by December 31, 2005, in the proposed rule filing submitted by the Exchange on December 19, 2005 (the "Original Extension Rule Filing"), as amended by Amendment No. 1 thereto, the Exchange also requested an extension of the Original TNT Exception to January 31, 2006.²⁴ The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing.²⁵ In the proposed rule filing submitted by the Exchange on January 27, 2006 (the "Second Extension Rule Filing"), the Exchange requested that the Original TNT Exception be further extended to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006.²⁶ The extension took effect immediately upon the filing of the Second Extension Rule Filing.²⁷ In the proposed rule filing submitted by the Exchange on March 3, 2006 (the "Third Extension Rule Filing"), the Exchange requested that the Original TNT Exception be further extended to March 31, 2006.²⁸ The extension was approved on an accelerated basis by the Commission.²⁹ The approval was subject to the following conditions.

²³ Id. at 56960.

²⁴ See File No. SR-PCX-2005-139 (December 19, 2005), as amended by Amendment No. 1 thereto (December 23, 2005).

²⁵ See the First Extension Notice, supra note 7, at 640.

²⁶ See File No. SR-PCX-2006-04 (January 27, 2006).

²⁷ See the Second Extension Notice, supra note 7, at 6534.

²⁸ See File No. SR-PCX-2006-21 (March 3, 2006).

²⁹ See the Third Extension Notice, supra note 7, at 12419.

First, Mr. Putnam must resign as a member of the management committee of TAL. Second, Mr. Putnam must continue to abstain, as he has abstained in the past, from directing the respective day-to-day operations of TAL or TNT or otherwise participating in the respective management or businesses of TAL or TNT. Third, Mr. Putnam must not exercise any voting rights with respect to any equity interests of TAL or in excess of 5% of voting rights with respect to TNT (collectively, the “TNT Conditions”). The second and third TNT Conditions, however, are subject to the following exception: Mr. Putnam is permitted to act or vote in a manner otherwise prohibited by such condition if Mr. Putnam’s action or exercise of voting rights would be necessary to approve and consummate the sale of Mr. Putnam’s interest in TNT. In accordance with the TNT Exception, Mr. Putnam resigned as a member of the management committee of TAL and has otherwise complied with the TNT Conditions.

c. Further Extension of the Original TNT Exception

Since the approval of the Original TNT Exception, Mr. Putnam has been working in good faith to sell his interest in TNT at or below the 5% level, and entered into a definitive agreement for such a sale on March 30, 2006.³⁰ The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of the National Association of Securities Dealers, Inc. (“NASD”) and other regulatory approvals. Such approvals are expected to be received by within thirty days of signing of the definitive agreement and Mr. Putnam would then close the sale as soon as practicable thereafter. To that end, the Exchange

³⁰ The potential purchaser is not a Related Person of Archipelago or a “Prohibited Person” under the NYSE Arca Holdings Certificate of Incorporation. Telephone conversation between Tim Elliott, Assistant General Counsel - Regulatory, Exchange, and Jan Woo, Attorney, Division of Market Regulation, Commission, on March 31, 2006.

hereby proposes to further extend the Original TNT Exception to May 15, 2006, subject to the TNT Conditions described above.

In requesting such extension, Archipelago and the Exchange note that the NASD, a self-regulatory organization not affiliated with Archipelago, has been designated by the Commission as the “Designated Examining Authority” (“DEA”) for TNT pursuant to Rule 17d-1 of the Act.³¹ Furthermore, during the interim period, TNT would continue to be covered by the scope of an agreement between NASD and the Exchange, which was entered into pursuant to Rule 17d-2 under the Act³² and provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of the Exchange, including TNT (“17d-2 Agreement”).³³

Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original TNT Exception and the extensions thereof outlined above,

³¹ Pursuant to Rule 17d-1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one SRO, the Commission shall designate to one of such organizations the responsibility of examining such member for compliance with the applicable financial responsibility rules. In making such designation, the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions. 17 CFR 240.17d-1.

³² Rule 17d-2 under the Act provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibilities to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. 17 CFR 240.17d-2.

³³ See SEC Order, supra note 6, at 56959.

while allowing Mr. Putnam a reasonable amount of time to effectuate the actions necessary to eliminate the affiliation between TNT and Archipelago.

2. Statutory Basis

The Exchange believes that the proposed rule change in this filing is consistent with Section 6(b)³⁴ of the Act, in general, and furthers the objectives of Section 6(b)(1),³⁵ in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),³⁶ in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the equities and options business of the Exchange that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and 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

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(1).

³⁶ 15 U.S.C. 78f(b)(5).

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 on the proposed rule change were neither solicited nor received.

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, it has become effective pursuant to Section 19(b)(3)(A)³⁷ of the Act and Rule 19b-4(f)(6) thereunder.³⁸ 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.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because the current exception with respect to Mr. Putnam's ownership of TNT is set to expire on March 31, 2006, such waiver will allow TNT to remain in compliance with ownership and voting limitations in the NYSE Arca Holdings Certificate of Incorporation. The Commission notes that the Exchange has represented that Mr. Putnam signed

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6). The Exchange provided the Commission with written notice of its intent to file this proposed rule change on March 29, 2006.

a definitive agreement to reduce his ownership interest in TNT on March 30, 2006. However, Mr. Putnam needs an extension of time to receive necessary regulatory approvals and complete the sale. The extension is limited in scope and duration, and Mr. Putnam will continue to be subject to the TNT Conditions described in this rule filing during the extension period. Further, the Commission notes that the following protections are and will continue to be in place during the interim period: TNT is a member of the NASD (as well as NYSE Arca); the NASD is the DEA for TNT pursuant to Rule 17d-1 under the Act; and TNT is and will continue to be covered by the scope of the 17d-2 Agreement.

For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.³⁹

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-NYSEArca-2006-08 on the subject line.

³⁹ 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. See 15 U.S.C. 78c(f).

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- NYSEArca-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-NYSEArca-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.⁴⁰

Nancy M. Morris
Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).