

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55109; File No. SR-NYSEArca-2007-05)

January 16, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding a Proposed Combination Between NYSE Group, Inc. and Euronext N.V.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 12, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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

NYSE Arca is submitting the proposed rule change to the Commission in connection with the proposed business combination (the “Combination”) of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), with Euronext N.V., a company organized under the laws of The Netherlands (“Euronext”). As a result of the Combination, the businesses of NYSE Group (including that of NYSE Arca) and Euronext will be held under a single, publicly traded holding company named NYSE Euronext, a Delaware corporation (“NYSE Euronext”). The Combination involves certain modifications to the organizational documents of NYSE Group,<sup>3</sup>

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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> Upon the consummation of the Combination, NYSE Group will be merged with and into Jefferson Merger Sub, Inc. and the name of Jefferson Merger Sub, Inc. will be changed to NYSE Group, Inc. The changes to the NYSE Group organizational documents refer to changes from the current NYSE Group organizational documents. Technically, however, the Amended and Restated Certificate of Incorporation and Amended and Restated

the current indirect parent company of NYSE Arca, and of NYSE Euronext, which upon completion of the Combination will be the new indirect parent company of NYSE Arca. The organizational documents and independence policies of NYSE Group and NYSE Euronext and the trust documents constitute rules of the Exchange. The resolutions of the board of directors of NYSE Group and the changes to the Certificate of Incorporation of Archipelago Holdings, Inc., current direct parent of NYSE Arca are also rules of the Exchange requiring Commission approval. Accordingly, NYSE Arca submits this proposed rule change to reflect the rule changes to be implemented in connection with the Combination.

The text of the proposed rule change and Exhibits 5A through 5H<sup>4</sup> are available at the Exchange, the Commission's Public Reference Room, and [www.nysearca.com](http://www.nysearca.com).

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

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Bylaws of NYSE Group that will be operative upon the consummation of the Combination will be amended and restated forms of the Certificate of Incorporation and Bylaws of Jefferson Merger Sub, Inc.

<sup>4</sup> The proposed Amended and Restated Certificate of Incorporation of NYSE Euronext is Exhibit 5A; the proposed Amended and Restated Bylaws of NYSE Euronext are Exhibit 5B; the proposed NYSE Euronext Director Independence Policy, which policy will replace the current NYSE Group Director Independence Policy, is Exhibit 5C; the proposed Amended and Restated Certificate of Incorporation of NYSE Group is Exhibit 5D; the proposed Amended and Restated Bylaws of NYSE Group are Exhibit 5E; the resolutions of the board of directors of NYSE Group are Exhibit 5F; the proposed Amended and Restated Certificate of Incorporation of Archipelago Holdings, Inc. ("Arca Holdings") is Exhibit 5G and the proposed Trust Agreement for the Delaware Trust is Exhibit 5H. Each of these Exhibits will be operative as of the consummation of the Combination.

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 Arca is submitting the proposed rule change to the Commission in connection with the Combination of NYSE Group with Euronext. As a result of the Combination, the businesses of NYSE Group (including that of NYSE Arca) and Euronext will be held under a single, publicly traded holding company named NYSE Euronext. The Combination involves certain modifications to the organizational documents of NYSE Group, the current indirect parent company of NYSE Arca, and of NYSE Euronext, which upon completion of the Combination will be the new indirect parent company of NYSE Arca. The organizational documents and independence policies of NYSE Group and NYSE Euronext and the trust documents constitute rules of the Exchange. The resolutions of the board of directors of NYSE Group and the changes to the Certificate of Incorporation of Archipelago Holdings, Inc., current direct parent of NYSE Arca are also rules of the Exchange requiring Commission approval. Accordingly, NYSE Arca submits this proposed rule change to reflect the rule changes to be implemented in connection with the Combination.

For a description of the Combination and related rule changes regarding NYSE Euronext, NYSE Group, and the Delaware Trust, see the rule filing submitted by the New York Stock

Exchange LLC (“NYSE”) relating to the Combination (File Number SR-NYSE-2006-120) (the “NYSE Rule Filing”).<sup>5</sup>

As a self-regulatory organization also owned by NYSE Group, the Exchange is making reference in this proposed rule change to the applicable matters described in the NYSE Rule Filing. In particular, the NYSE Rule Filing describes the following matters:

- corporate structure of NYSE Euronext following the Combination. In particular, Arca Holdings will remain a wholly owned subsidiary of NYSE Group. NYSE Arca Holdings, Inc., a Delaware corporation (“NYSE Arca Holdings”), and NYSE Arca L.L.C., a Delaware limited liability company (“NYSE Arca LLC”), will remain wholly owned subsidiaries of Arca Holdings. NYSE Arca will remain a wholly owned subsidiary of NYSE Arca Holdings and NYSE Arca Equities, Inc., a Delaware corporation formerly known as PCX Equities, Inc. (“NYSE Arca Equities”), will remain a wholly owned subsidiary of NYSE Arca. NYSE Arca will continue to maintain its status as a registered national securities exchange and self-regulatory organization. Arca Holdings’ businesses and assets will continue to be held by it and its subsidiaries. Pursuant to a services agreement, NYSE Regulation will perform many of the regulatory functions of NYSE Arca.

There will be no change to the current manner of election or appointment of the directors and officers of Arca Holdings, NYSE Arca Holdings, NYSE Arca LLC, NYSE Arca or NYSE Arca Equities (or of the Euronext exchanges) as a result of the

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<sup>5</sup> See Securities Exchange Act Release No. 55026 (December 29, 2006), 72 FR 814 (January 8, 2007).

Combination. The Combination will have no effect on the ability of any party to trade securities on NYSE Arca or NYSE Arca Equities.

- board of directors and board committees of NYSE Euronext. Specifically, in contrast to the current independence policy of NYSE Group, the independence policy of NYSE Euronext will not provide as a categorical matter that a person fails to be independent if he or she is an executive officer of a foreign private issuer of securities listed on the NYSE or NYSE Arca. The Exchange believes that this change is important because NYSE Euronext will be a multinational company, with European Persons comprising half of its initial directors, most of whom will initially be former directors of Euronext. Euronext does not prohibit executive officers of companies listed on Euronext exchanges from serving as directors of Euronext because Euronext does not (and NYSE Euronext will not) regulate these companies in the way that the Exchange regulates its listed companies. The Exchange therefore believes that a categorical requirement prohibiting all executive officers of foreign private issuers listed on the NYSE on NYSE Arca could preclude a large pool of otherwise highly qualified director candidates from serving on the NYSE Euronext board of directors and is not necessary.

In addition, the director independence policy will contain a transition period so that the independence requirements will not apply to the European Persons on the NYSE Euronext board of directors until the annual meeting of NYSE Euronext stockholders in 2008.

Finally, in contrast to the current independence policy of NYSE Group, the independence policy of NYSE Euronext will not provide as a categorical matter that a

person fails to be independent if he or she is a director of an affiliate of a member organization (which includes member organizations of NYSE (as defined in paragraph (b) of Rule 2 of NYSE), OTP Firms of NYSE Arca (as defined in Rules 1.1(r) of NYSE Arca) and ETP Holders of NYSE Arca Equities, Inc. (as defined in Rule 1.1(n) of NYSE Arca Equities, Inc.)).

The independence policy of NYSE Euronext will require, however, that (1) executive officers of foreign private issuers (including, for the avoidance of doubt, companies whose securities are listed on a Euronext exchange), (2) executive officers of NYSE Euronext, (3) any European Person on the NYSE Euronext board of directors who would not satisfy the independence requirements in the independence policy but for the transition period, and (4) any director of an affiliate of a member organization, taken together, shall constitute no more than a minority of the total number of directors of NYSE Euronext. In addition, none of (1) an executive officer of an issuer whose securities are listed on the NYSE or NYSE Arca (regardless of whether such issuer is a foreign private issuer), (2) a European Person on the NYSE Euronext board of directors who would not satisfy the independence requirements in the independence policy but for the transition period, or (3) any director of an affiliate of a member organization can qualify as an independent director of the NYSE, NYSE Market or NYSE Regulation. Consequently, the Exchange believes that the proposed changes, when taken together, do not present significant concerns regarding the independence of the board of NYSE Euronext.

- management of NYSE Euronext.
- voting and ownership limitations on the shares of NYSE Euronext.

- protection of the self-regulatory functions and oversight.<sup>6</sup>

The Exchange understands that the Commission is also concerned about potential unfair competition and conflicts of interest between a U.S. exchange's self-regulatory obligations and its commercial interests that could exist if such exchange were to become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.<sup>7</sup> The Exchange acknowledges that ownership of, or a control relationship with, a member organization by NYSE Euronext or any of its subsidiaries would necessitate that the foregoing concerns be first addressed with, and to the satisfaction of, the Commission<sup>8</sup> and/or, as appropriate, the European Regulators.

- provisions relating to the Delaware Trust and Dutch Foundation, including:
- administration of the Delaware Trust and Dutch Foundation,
- material adverse changes in law,
- remedies of the Dutch Foundation and Delaware Trust,
- unwinding of remedies,

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<sup>6</sup> In particular, to facilitate compliance with the requirements of Rule 17a-1(b) under the Exchange Act, NYSE Euronext shall maintain in the United States originals or copies of Overlapping Records (as defined in the NYSE Rule Filing) covered by Rule 17a-1(b) promptly after creation of such Overlapping Records.

<sup>7</sup> See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (File Number SR-PCX-2005-90); and Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File Number SR-NYSE-2005-77).

<sup>8</sup> We note that the Commission has specifically approved the ownership and operation of the outbound router function of Archipelago Securities by Archipelago, subject to the conditions specified in Securities Exchange Act Release No. 52497.

- consequences of the exercise of remedies,
- automatic suspension and repeal of certain provisions in the NYSE Euronext organizational documents,
- transfer of Foundation and Trust property,
- submission to jurisdiction,
- other duties,
- initiatives by the Board of Trustees of the Delaware Trust and the Board of Directors of the Foundation,
- duration of the Dutch Foundation, and
- term of the Delaware Trust.
- NYSE Group waiver of its ownership and voting limitations.

In this regard, an extract with the relevant resolutions is attached to this rule filing as Exhibit 5F.

The Exchange hereby requests that the Commission allow NYSE Euronext to wholly own and vote all of the outstanding common stock of NYSE Group, either alone or with its related persons, except for any related person of NYSE Euronext which is an ETP Holder of NYSE Arca Equities, OTP Holder or OTP Firm of NYSE Arca, or member or member organization of the NYSE, upon the consummation of the Combination.

- regulation following the Combination.
- changes to the organizational documents of NYSE Group.

In addition, Article Fourth of the Certificate of Incorporation of Arca Holdings is being amended to provide for voting or ownership of the shares of stock of Arca Holdings by the

Delaware Trust pursuant to the terms and conditions of the Trust Agreement by and among NYSE Euronext, Inc., NYSE Group, Inc. and the trustees and Delaware trustee thereto.<sup>9</sup>

The proposed rule change, if approved by the Commission, will not be operative until the consummation of the Combination.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)(1) of the Exchange Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(1) in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange 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) of the Exchange Act<sup>11</sup> because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, 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.

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<sup>9</sup> See proposed Amended and Restated Certificate of Incorporation of Arca Holdings., Article Fourth (C)(1) and (D)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(1).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be

disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-05. 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-2007-05 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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