

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55566; File No. SR-NYSEArca-2007-33)

April 2, 2007

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 2007, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 substantially by the Exchange. The Exchange filed the proposed 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 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 make certain technical changes to the amended and restated certificate of incorporation of NYSE Euronext to remove all references to “Year 1 NYSE Shares” and “Year 1 NYSE Group Shares” from the provisions regarding transfer restrictions and to clarify that it is the currently operative certificate of incorporation of NYSE Group, Inc. (and not the certificate of incorporation of NYSE Group, Inc. that will be operative after the closing of the Combination (as defined below)) which contains the definitions of the terms

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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).

“Year 2 NYSE Share” and “Year 3 NYSE Share.” The text of the proposed rule change is available at the Exchange, <http://www.nyse.com>, and the Commission’s Public Reference Room.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing to the Commission in connection with the proposed business combination (“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 New York Stock Exchange LLC and the Exchange) and Euronext will be held under a single, publicly traded holding company named NYSE Euronext, a Delaware corporation (“NYSE Euronext”). Following the Combination, each of NYSE Group and Euronext (or a successor Dutch holding company) will be a separate subsidiary of NYSE Euronext, and their respective businesses and assets will continue to be held as they are currently held (subject to any post-closing reorganization of Euronext). The Commission has approved the Exchange’s rule filing

in connection with the Combination (“Combination Filing”)<sup>5</sup> and the Combination is scheduled to close on April 4, 2007.

Subsequent to the Combination Filing’s approval, the transfer restrictions on the Year 1 NYSE Shares, as defined in the currently operative certificate of incorporation of NYSE Group, expired, causing the references to “NYSE Year 1 Shares” and “NYSE Group Year 1 Shares” in the amended and restated certificate of incorporation of NYSE Euronext to become obsolete and potentially confusing. Additionally, the Exchange wishes to clarify that it is the currently operative certificate of incorporation of NYSE Group (and not the certificate of incorporation of NYSE Group that will be operative after the closing of the Combination) in which the terms “Year 2 NYSE Share” and “Year 3 NYSE Share” are defined. The Exchange is also adding the date on which the amended and restated certificate of incorporation of NYSE Euronext is being filed. The proposed changes do not affect the substance of the amended and restated certificate of incorporation of NYSE Euronext in any way. The Exchange needs the proposed rule change to be effective and operative prior to the consummation of the Combination, as it must file the amended and restated certificate of incorporation of NYSE Euronext with the Delaware Secretary of State before the closing of the Combination,<sup>6</sup> as contemplated by the Combination Filing.

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<sup>5</sup> Securities Exchange Act Release No. 55294 (February 14, 2007), 72 FR 8046 (February 22, 2007) (SR-NYSEArca-2007-05).

<sup>6</sup> The Commission notes that the Exchange included references in the proposed rule change to filing the amended and restated certificate of incorporation of NYSE Euronext with the Delaware Secretary of State and the Secretary of State of New York, before and at the closing of the Combination. The Commission staff clarified with the Exchange that the correct reference should be to filing with the Delaware Secretary of State before the closing of the Combination. Telephone conversation between Janet Kissane, Vice President and Associate General Counsel, NYSE Group, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 29, 2007.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)<sup>7</sup> 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

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 proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days after the date of the filing, 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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

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

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

A proposed rule change filed under Rule 19b-4(f)(6)<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 Exchange has requested that the Commission waive the 30-day operative delay, and designate the proposed rule change immediately operative.<sup>12</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup> The Exchange has stated that the amended and restated certificate of incorporation of NYSE Euronext as modified by this proposed rule change must be filed with the Delaware Secretary of State before the closing of the Combination that is scheduled for April 4, 2007. The Commission notes that the proposed modifications to the amended and restated certificate of incorporation of NYSE Euronext are technical changes that are non-substantive. Accordingly, the Commission designates that the proposed rule change 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.

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<sup>10</sup> Id.

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

<sup>12</sup> The Exchange also asked the Commission to waive the five-business day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). The Commission is exercising its authority to designate a shorter time, and notes that the Exchange provided the Commission with written notice of its intention to file the proposed rule change on March 26, 2007.

<sup>13</sup> 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).

#### 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-2007-33 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-NYSEArca-2007-33. 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-2007-33 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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