

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53443; File No. SR-NYSE-2006-14)

March 8, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Establishment of a Trading License Fee for 2006 and the Creation of Certain Other Fees for Trading License Holders

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 6, 2006, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the NYSE. NYSE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19b(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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 establish a trading license fee for 2006 to be implemented at the time of closing of its merger with Archipelago Holdings, Inc. (“Archipelago”). In addition, the Exchange proposes to create certain other fees for trading license holders, to eliminate from the 2006 Exchange Price List references to fees that will no longer be relevant after the merger,

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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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

and to make three technical changes to the 2006 Exchange Price List to clarify how certain fees will be charged.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at 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 NYSE 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

The NYSE is submitting this filing to establish a trading license fee for 2006 to be implemented at the time of the Exchange's proposed merger and to eliminate from the 2006 Exchange Price List references to fees charged to Exchange members that will no longer be relevant after the Exchange's proposed merger. The Exchange is also proposing the following new fees: (i) a fee relating to the approval of any new member or pre-qualified substitute; (ii) a badge maintenance fee; and (iii) a license transfer fee. The Exchange is also making three technical changes to the 2006 Exchange Price List to clarify how certain fees will be charged after the merger.

The Exchange is planning to consummate a merger with Archipelago, as a result of which the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group, Inc. (“NYSE Group”). Following the merger, the NYSE’s current businesses and assets will be held in three separate entities affiliated with NYSE Group—New York Stock Exchange LLC (“NYSE LLC”), NYSE Market, Inc. and NYSE Regulation, Inc. The Commission has approved the Exchange’s rule filing in connection with the merger<sup>5</sup> and the merger is scheduled to close on March 7, 2006.

### **Trading License Fees**

Upon completion of the merger, all of the membership interests in the Exchange will be exchanged for a combination of cash and common stock of NYSE Group. NYSE LLC will be the successor to the Exchange’s status as a self-regulatory organization (“SRO”). After the merger, the right to transact business on the floor of the Exchange will be acquired by purchasing a trading license from the Exchange. Each trading license will provide to the license holder identical trading floor access rights to those previously held by a member of the Exchange. Starting with calendar year 2007, the Exchange will sell trading licenses in an annual modified “Dutch” auction under new NYSE Rule 300. However, to facilitate the distribution of trading licenses so that licensees could transact business immediately after the merger, an initial trading license auction was held on January 3, 2006. While NYSE Rule 300 will not be effective until after the merger, the 2006 trading license auction was conducted under the same modified

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<sup>5</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006) (SR-NYSE-2005-77).

“Dutch” auction procedures established by NYSE Rule 300 for auctions in future years, subject to the modifications set out in new NYSE Rule 300T.<sup>6</sup>

The auction produced 1,274 successful bids for trading licenses at an annual price of \$49,290 each. Assuming the merger closes on March 7, 2006, as scheduled, the actual price payable for 2006 trading licenses will be \$40,147.50, representing a pro-ration of the annual fee to reflect the amount of time remaining in the year at the time of the closing of the merger. Subject to the maximum number allowable of 1,366 licenses, the Exchange will sell additional trading licenses during the remainder of 2006 at an annual rate of \$54,219 (i.e., 110% of the \$49,290 annual fee set in the 2006 auction) pro-rated to reflect the amount of time remaining in the year at the time of the commencement of the license.

New NYSE Rule 300 provides that: (i) trading license holders must pay the annual fee in equal monthly installments in advance over the period during which the trading license is in effect, and (ii) prior to the commencement of the trading license, the holder shall pay to the Exchange the first monthly installment of the trading license fee, plus a cash deposit equal to one

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<sup>6</sup> New Rule 300T modified the auction provisions of NYSE Rule 300 in the following respects for the 2006 auction:

(A) the Minimum Bid Price was eighty percent (80%) of the Reference Price (as hereinafter defined), and there was also imposed a “Maximum Bid Price” of one hundred twenty percent (120%) of the Reference Price. The term “Reference Price” means the average annual lease price for leases (including renewal leases) which leases (or renewals) commenced during the six-month period ending on the last business day of the last calendar month ending at least thirty days before the opening of the auction. In addition, in determining the Auction Price, the Clearing Price is reduced by multiplying it by a fraction the numerator of which is the number of months for which the license shall be issued and the denominator of which is twelve (12).

(B) The number of trading licenses that could be acquired by a single member organization was limited to a number that was the greater of: (i) 35, and (ii) 125% of the number of regular and electronic access Exchange memberships utilized by the member organization in its business immediately prior to the merger.

month's installment of the trading license fee. As the trading license fee applicable to calendar 2006 could not be determined until the merger closing date was known with specificity, the Exchange was unable to bill trading license holders their initial installment in advance.

Therefore, the Exchange will send trading license holders a bill in early April 2006 for: (i) the period from the closing of the merger until March 31, 2006; (ii) the month of April 2006; and (iii) a one-month deposit which will be applied to payment for the month of December 2006 or to the one-month fee payable upon early termination of the trading license, if applicable. Bills are payable on receipt.

**Fee for Approval of New Member or Pre-qualified Substitute or of Existing Member or Pre-qualified Substitute upon Transfer to a Different Member Organization**

The Exchange proposes to charge a fee of \$1,000 for the approval of new members. This fee will not apply to current Exchange members who continue approved for trading floor access after the merger. From and after the merger, however, the fee will be billed to the new employer of: (i) any new member or pre-qualified substitute not transferring from another member organization; (ii) any approved member who changes employment and continues as a member with another trading license holder; or (iii) any pre-qualified substitute who changes employment and continues as a pre-qualified substitute with another trading license holder. This fee reflects the costs to the Exchange of processing such new memberships or transfers, including checking that the member organization has a license for its new employee or approving the purchase of a license, ensuring that the member is not subject to any regulatory restriction, checking that the member's new employer has put in place the required financial guarantee, and issuing or resetting the member's badge and handheld. Under the Exchange rules existing prior to the

merger, the Exchange charges a fee (currently \$5,000<sup>7</sup>) (“Transfer Fee”) for the transfer of a membership, including a transfer between two employees of the same member organization. As such, the processing fee associated with the hiring of new member or pre-qualified substitute employees by a member organization will be reduced from \$5,000 to \$1,000 after the merger.

### **Badge Maintenance Fee**

The Exchange proposes to charge a \$250 badge maintenance fee, to be charged annually to member organizations with respect to each active member and each pre-qualified substitute. The fee will cover the Exchange’s costs in maintaining the technological infrastructure supporting the badge system and updating system data as personnel commence and leave employment on the trading floor.

### **Trading License Transfer Fee**

The Exchange proposes to charge a trading license transfer fee of \$1,000, to be charged when an existing trading license is to be transferred to a permitted transferee. Permitted transfers of trading licenses pursuant to new NYSE Rule 300(a) are limited to transfers to a qualified and approved member organization: (i) which is an affiliate, or (ii) which continues substantially the same business of such trading license holder without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation, reorganization or the like. This fee will be applied separately to each individual license transferred. The trading license transfer fee reflects the processing costs incurred by the Exchange in effectuating a permitted transfer, including the re-registration of employee members with the new member organization and the closing down of the old billing account and opening

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<sup>7</sup> Transfer fees for purchased and leased memberships equal 5% of the purchase price or last contracted sale of a membership, subject to minimum and maximum fees of \$1,000 and \$5,000 respectively. As membership prices currently exceed \$1,000,000, the current initiation fee is the \$5,000 maximum.

of one in the new member organization's name. Prior to the merger, any transfer of an Exchange membership is subject to the \$5,000 Transfer Fee described above. As a transfer of a trading license after the merger is equivalent to the transfer of a membership before the merger, the Exchange is effectively reducing the fee charged upon the occurrence of a permitted transfer from \$5,000 to \$1,000 after the merger.

### **Technical Changes to Price List**

The Exchange proposes to make three clarifying changes to the 2006 Exchange Price List to clarify that: (i) the annual aggregate regulatory fee of \$16,000,000 to be allocated among specialist firms will be based on the number of trading licenses held by each specialist firm; (ii) the annual regulatory fee of \$11,000 charged to non-specialist members will be charged on a per trading license basis; and (iii) the \$180 minimum regulatory fee currently charged to members who do not conduct a public business will be charged after the merger to member organizations.

### **Deletion of Fees Charged to Members**

The 2006 Exchange Price List contains references to fees charged to members, physical access members and electronic access members. As the concept of Exchange membership as a means of acquiring the right to conduct business on the trading floor will be superseded by the issuance of trading licenses upon completion of the merger, these fees will have no continued relevance. Therefore, the Exchange is deleting all references to them from the 2006 Exchange Price List.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that an Exchange have rules that provide an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### 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

Written comments were neither solicited nor received on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>9</sup> of the Act and subparagraph (f)(2)<sup>10</sup> thereunder because it establishes or changes a due, fee, or other charge. 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.

### 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:

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<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).



Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);  
or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-14 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-NYSE-2006-14. 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 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-2006-14 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>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).