

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53703; File No. SR-NYSEArca-2006-09)

April 21, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Arca Equities Inc. Rule 5.1(c)

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 April 13, 2006, 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 prepared by the Exchange. The Exchange filed the proposal 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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), is proposing, for the reasons and time period set forth in this proposal, that an independent accounting firm not prepare a report – for submission to the Commission – on Archipelago Holdings, Inc.’s (“Archipelago Holdings”) compliance with the applicable NYSE Arca Equities’ listing standards, as required by NYSE Arca Equities Rule 5.1(c).

---

<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).

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 Arca 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

NYSE Arca Equities Rule 5.1(c) requires, among other things, that if a security of an affiliate of NYSE Arca Equities or any entity that operates and/or owns a trading system or facility of NYSE Arca is listed pursuant to the rules of NYSE Arca Equities, then, once a year, an independent accounting firm shall review the listing standards for the subject security to ensure that the issuer is in compliance with NYSE Arca's Equities' listing requirements, and a copy of the report shall be forwarded promptly to the Commission ("Annual Report").<sup>5</sup> In August 2004, Archipelago Holdings' common stock was listed on NYSE Arca pursuant to the rules of NYSE Arca Equities. Because Archipelago Holdings owns and operates NYSE Arca Marketplace (formerly known as the Archipelago Exchange), a facility of NYSE Arca (formerly

---

<sup>5</sup> NYSE Arca Equities Rule 5.1(c) also requires that NYSE Arca Equities submit a monthly report to the Commission that describes its monitoring, among other things, of (i) trading in listed securities subject to this rule, and (ii) compliance by such listings with applicable listing standards. NYSE Arca Equities submitted such reports related to the listing of Archipelago Holdings on a timely basis for each month that Archipelago Holdings was listed and subject to this rule, including the report for March 2006, which was submitted on April 10, 2006.

known as the Pacific Exchange), it was subject to the requirements of Rule 5.1(c), including the Annual Report.<sup>6</sup>

On March 7, 2006, as a result of the merger between Archipelago Holdings and the New York Stock Exchange Inc., which was completed that day, Archipelago Holdings' common stock was delisted from NYSE Arca. Accordingly, for the following reasons, NYSE Arca, by this filing, is proposing that the Annual Report related to Archipelago Holdings' listing on NYSE Arca for the period August 2004 through March 2006 not be completed:

1. the Annual Report would relate to an entity (Archipelago Holdings) that is no longer publicly traded or listed on NYSE Arca, and as such, policy considerations that underlie the requirement in NYSE Arca Equities Rule 5.1(c) for an Annual Report as set forth in the Commission's Approval Order – that it would provide additional assurance that all listed securities comply with listing standards and help serve to minimize or eliminate potential conflicts of interest that may exist as a result of the listing on NYSE Arca of the security of an affiliate of NYSE Arca Equities or an entity that operates and/or owns a trading system or facility of the Exchange<sup>7</sup> – are no longer applicable;<sup>8</sup>

---

<sup>6</sup> See Securities Exchange Act Release No. 50171 (August 9, 2004), 69 FR 50427 (August 16, 2004) (order approving NYSEArca Equities Rule 5.1(c)) (“Approval Order”).

<sup>7</sup> A discussion of these conflicts is contained in the Approval Order.

<sup>8</sup> Telephone conversation between A. David Strandberg III, Director, NYSE Arca Equities, and Heather A. Seidel, Senior Special Counsel, Commission, Division of Market Regulation (“Division”), on April 21, 2006.

2. NYSE Arca Equities otherwise fully complied with its Rule 5.1 (c) during this time period, including the preparation and submission to the Commission of the monthly reports also required by Rule 5.1(c); and
3. the costs and burden related to preparation of the Annual Report would be substantial in relation to any benefits.

Notwithstanding this filing, NYSE Arca Equities Rule 5.1(c) remains in full force and effect, and is not revised in any way by this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(5)<sup>10</sup> in particular, in that the policy and practical considerations underlying NYSE Arca Equities Rule 5.1(c) are no longer applicable, that NYSE Arca Equities otherwise complied with Rule 5.1(c), and the costs and burden related to compliance would be substantial in relation to any benefits.<sup>11</sup>

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

The Exchange does not believe that the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

---

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> At the request of the Exchange, the Commission staff amended the statutory basis section to make it consistent with the Form 19b-4 as filed by the Exchange. Telephone conversation between A. David Strandberg III, Director, NYSE Arca Equities, and Natasha Cowen, Attorney, Commission, Division, on April 19, 2006 (“April 19 Telephone Conversation”).

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:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) 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) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>14</sup> the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

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.

---

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). April 19 Telephone Conversation.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

#### 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-2006-09 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-2006-09. 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 offices 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-2006-09 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.<sup>15</sup>

Nancy M. Morris  
Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).