

SECURITIES AND EXCHANGE COMMISSION
(Release No. 55003; File No. SR-NYSE-2006-109)

December 22, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Regulation, Inc. Policies Regarding Exercise of Power to Fine NYSE Member Organizations and Use of Money Collected as Fines

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 December 6, 2006, the New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 substantially 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 Regulation, Inc. (“NYSE Regulation”) proposed to adopt internal procedures to assure the proper exercise by NYSE Regulation of its power to fine member organizations of the Exchange and the proper use by NYSE Regulation of the funds so collected. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.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 and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In conversation with the staff of the Commission, prior to Commission approval of rule changes related to the merger of the New York Stock Exchange, Inc. with Archipelago Holdings, Inc., the Exchange undertook to subsequently file with the Commission a proposed rule change regarding NYSE Regulation's use of fines collected from member organizations following disciplinary action by NYSE Regulation against such member organizations.³

The purpose of this proposed rule change is to provide increased transparency regarding the processes which NYSE Regulation has in place to insure that the power of the Exchange, through NYSE Regulation, to impose fines on its members for disciplinary violations is exercised appropriately, and particularly to guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose. The process proposed by NYSE Regulation is a combination of specific limits on the use of fine income coupled with active and ongoing board review of how income from fines is used by NYSE Regulation.

Important to an understanding of this issue is the specific corporate governance arrangements which have already been put in place with Commission approval to insure the independence of NYSE Regulation, the subsidiary to which the Exchange has delegated the

³ See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77), at note 231 ("Approval Order").

performance of its regulatory functions. This not-for-profit wholly-owned subsidiary of the Exchange is governed by a board of directors all of whom meet the independence policy applied to the board of NYSE Group, Inc. (“NYSE Group”), and a majority of whom do not serve on any other board within the NYSE Group (“non-affiliated directors”). This arrangement assures that the non-affiliated directors remain completely free from any suggestion that their interests in serving NYSE Regulation might at times conflict with a duty to NYSE Group or one of its other affiliates. The chief executive officer of NYSE Regulation, Richard Ketchum, reports only to the board of NYSE Regulation, and not to the chief executive or any other officer of NYSE Group. In addition, NYSE Regulation has its own compensation committee and nominating and governance committee, both of which must be comprised of a majority of non-affiliated directors. None of the employees of NYSE Regulation are entitled to own the stock of NYSE Group.

The Exchange has the authority under the Act⁴ to assess its members to cover its costs of regulation, and the Exchange has delegated this authority to NYSE Regulation with respect to regulatory and certain other fees. Subject to the requirement to file fees with the Commission, NYSE Regulation determines, assesses, collects and retains examination, access, registration, qualification, continuing education, arbitration, dispute resolution and other regulatory fees. NYSE Regulation funds its examination programs for assuring financial responsibility and compliance with sales practice rules, testing, and continuing education through fees assessed directly on member organizations.

NYSE Regulation also receives funding from markets for which it provides regulatory services; at this time, the Exchange and NYSE Arca, Inc. There is also an explicit agreement

⁴ 15 U.S.C. 78a, et seq.

among NYSE Group, the Exchange, NYSE Market, Inc. and NYSE Regulation to provide adequate funding to NYSE Regulation.

Finally, the Exchange's Operating Agreement specifies that the Exchange, as the owner of NYSE Regulation, "shall not use any assets of, or any regulatory fees, fines or penalties collected by, [NYSE Regulation] for commercial purposes or distribute such assets, fees, fines or penalties to [NYSE Group] or any other entity other than NYSE Regulation."

Notwithstanding all the foregoing, subsequent to the Approval Order and to comply with the undertaking made to the Commission staff and referenced in the Approval Order, NYSE Regulation has adopted the following additional internal procedures to assure the proper exercise of its power to fine member organizations and the proper use of the funds so collected.

- a. Fines will play no role in the annual NYSE Regulation budget process.

As in any corporate entity, NYSE Regulation prepares an operating budget in advance of each fiscal year. Beginning this year with the preparation of the 2007 operating budget, fines will be budgeted at zero, that is, budgeted expenses of NYSE Regulation will be offset entirely by budgeted income that does not include any anticipated income from fines. Among other things, this means that fines will not offset amounts budgeted for compensation of NYSE Regulation employees or directors.

During the course of a year, income from fines will be considered as available to fund non-compensation expenses of NYSE Regulation, which expenses were not anticipated in the budget process or which could not be included in the budget prepared in advance of the fiscal year because NYSE Regulation was unable to budget sufficient income from sources other than fines to offset the expenses.

- b. The use of fine income by NYSE Regulation will be subject to specific review and approval by the NYSE Regulation board of directors.

On a quarterly basis, the staff of NYSE Regulation will provide to the board a report on the amount of fine income received to date during the year and recommendations regarding its proposed use to fund regulatory expenses as above described. The use of the fine income will be subject to board approval.

Following each year, the staff of NYSE Regulation will provide the board a report reprising the fines imposed and the utilization of fine income by NYSE Regulation during that year. This report will analyze fines imposed by NYSE Regulation for consistency with precedent from both other NYSE disciplinary cases as well as publicly available disciplinary cases adjudicated by the National Association of Securities Dealers, Inc. and the Commission.

Each year the board will also consider whether unused fine income has accumulated beyond a level reasonably necessary for future contingencies, and may determine to utilize any such excess to fund one or more special projects of NYSE Regulation, to reduce fees charged by NYSE Regulation to its member organizations or the markets that it serves, or for a charitable purpose.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

⁵ 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of a free and open market 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

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 Exchange 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. Please include File Number SR-NYSE-2006-109 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-NYSE-2006-109. 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-2006-109 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.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).