

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 Amex. 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-Amex-2005-128 and should be submitted on or before February 2, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>23</sup> which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,<sup>24</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>25</sup> The Commission

notes that it previously approved the listing and trading of the Shares on the NYSE.<sup>26</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>27</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Amex rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Exchange will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

In support of this proposed rule change, the Exchange has made the following representations:

1. Amex has appropriate rules to facilitate transactions in this type of security.
2. Amex surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
3. Amex will distribute an Information Circular to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.
4. Amex will require a member with a customer that purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Circular.
5. Amex will cease trading in the Shares if (a) the primary market stops trading the Shares because of a

security on a national securities exchange unless the security is registered on that exchange pursuant to section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>26</sup> See NYSE Order, *supra* note 4.

<sup>27</sup> 17 CFR 240.12f-5.

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.<sup>29</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-128), as amended, is hereby approved on an accelerated basis.<sup>30</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

Nancy M. Morris,  
*Secretary*.

[FR Doc. E6-216 Filed 1-11-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53061; File No. SR-FICC-2005-20]

#### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Impose a Surcharge on Participants Submitting Trade Data by Batch Method

January 5, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 28, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on

<sup>29</sup> See NYSE Order, *supra* note 4.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

<sup>22</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78l(f).

<sup>25</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a

December 22, 2005, amended<sup>2</sup> the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder<sup>4</sup> whereby the proposal became effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FICC is implementing a surcharge to be imposed on participants of its Mortgage-Backed Securities Division ("MBSD") that submit trade data by batch submission methods.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>5</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Since the inception of FICC's Real-Time Trade Matching ("RTTM") service in 2002, the interactive submission method has grown to encompass an increasing portion of trades being submitted to FICC's MBSD.<sup>6</sup> The expansion of the use of the interactive trade submission method through RTTM for mortgage-backed securities is a FICC initiative because of the negative effects associated with the use of batch submission methods.<sup>7</sup> These negative effects include:

(a) Increased risk to the batch submitting participant as it foregoes timely achievement of trade comparison and a legally binding confirmation;

(b) increased risk to the contra side of the batch submitting participant and creation of an operational burden for the contra side in accounting for differing submission methods among its counterparties; and

(c) preclusion of FICC from laying the foundation to further reduce all participant costs through retirement of its proprietary batch trade submission program.

In order to ensure that participants use the RTTM service and submit transaction data on a timely basis and to cover the cost of batch processing, FICC will impose the following fees on participants of MBSD:

(a) Single-batch submitters will be subject to a 50 percent surcharge (with a minimum of \$500) on their post discount trade recording fees as recorded on their monthly bill and

(b) multi-batch submitters will be subject to a 20 percent surcharge (with a minimum of \$500) on their post discount trade recording fees as recorded on their monthly bill.

As an additional incentive for participants to switch to the interactive submission method, the minimum surcharge may be increased to \$1,000 at a later date, anticipated to occur at the beginning of 2007.<sup>8</sup> FICC also plans to announce a date, anticipated to be December 31, 2007, after which it will no longer support batch submissions.<sup>9</sup>

Surcharge revenue will be paid through to individual interactive messaging submitters pro rata based upon their ratio of trade recording fees to system-wide trade recording fees. FICC reserves the right to waive the surcharge for a particular MBSD participant if it determines in its sole discretion that the participant's classification as a single or multi-batch user in a particular month is due to a non-recurring system or operational problem.

The fees will become effective April 1, 2006.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to FICC because it

encourages FICC's participants to communicate with the clearing corporation in a manner that will promote the prompt and accurate clearance and settlement of securities transactions.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change will have an impact or impose any burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because the rule establishes a due, fee, or other charge. At any time within sixty days of the filing of the amended proposed rule change,<sup>13</sup> 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, as amended, 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 <mailto:rule-comments@sec.gov>. Please include File Number SR-FICC-2005-20 on the subject line.

<sup>2</sup> The amendment clarified an ambiguity in the proposed rule text.

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

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

<sup>5</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>6</sup> As of May 2005, 35 percent of MBSD participants use the interactive submission method. The activity of these participants encompassed 80 percent of total par and 74 percent of total sides of transactions processed.

<sup>7</sup> See Securities Exchange Act Release No. 45563 (Mar. 14, 2002), 67 FR 13389 (Mar. 22, 2002) [File No. SR-MBSCC-2001-02].

<sup>8</sup> FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing any such fee increase.

<sup>9</sup> FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing this policy.

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> For purposes of calculating the sixty day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-FICC-2005-20. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. 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-FICC-2005-20 and should be submitted on or before February 2, 2006.

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

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53073; File No. SR-NYSE-2005-77]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4 and 5 Relating to the Exchange's Business Combination with Archipelago Holdings, Inc.**

January 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 3, 2005, the New York Stock Exchange, Inc. ("NYSE" 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. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on December 12, 2005, and withdrew Amendment No. 2 on December 12, 2005. On December 12, 2005, the Exchange filed Amendment No. 3.<sup>3</sup> The Exchange filed Amendment No. 4 to the proposed rule change on December 21, 2005, and withdrew Amendment No. 4 on December 21, 2005. On December 21, 2005, the Exchange filed Amendment No. 5.<sup>4</sup>

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is submitting this rule filing, as amended, ("Proposed Rule Change") in connection with its proposed merger ("Merger") with Archipelago Holdings, Inc., a Delaware corporation ("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 Market, Inc.

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

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

<sup>3</sup> See Form 19b-4 dated December 12, 2005 ("Amendment No. 3"). Amendment No. 3 replaced Amendment No. 1 in its entirety.

<sup>4</sup> See Partial Amendment dated December 21, 2005 ("Amendment No. 5").

("NYSE Market"), and NYSE Regulation, Inc. ("NYSE Regulation").

To effect the Merger, the NYSE proposes that the organizational documents of NYSE Group and its subsidiaries as in effect immediately prior to the effective time of the Merger will be amended and restated. In addition, the NYSE proposes that New York Stock Exchange LLC, NYSE Regulation and NYSE Market will enter into a delegation agreement, and the Pacific Exchange, Inc. ("Pacific Exchange") and NYSE Regulation will enter into a regulatory services agreement ("Pacific Exchange Regulatory Services Agreement"). In addition, the NYSE proposes various amendments to its rules to reflect the Merger, which, after the Merger, will be the rules of New York Stock Exchange LLC. The Exchange states that the present Constitution of the NYSE will be eliminated and relevant provisions thereof will be included in the rules of New York Stock Exchange LLC.

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. The text of Exhibits 5A through 5K of the Proposed Rule Change and Amendment No. 5 are also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

**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, as amended. 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 Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The Exchange is submitting the Proposed Rule Change to the Commission in connection with the Merger with Archipelago. Following the Merger, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group, a Delaware corporation. The Merger will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of April 20,

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