

Under the proposed rule change, the ISE System would automatically switch a Competitive Market Maker quoting in the affected options series to an active Back-Up Primary Market Maker if the appointed Primary Market Maker stops quoting as a result of technical difficulties.⁵ The ISE System would automatically switch back to the appointed Primary Market Maker when it re-establishes its quotes in the series, but the Back-Up Primary Market Maker would continue to be responsible for any outstanding unexecuted orders it is handling. During the period that the services of the Back-Up Primary Market Maker are required, it would assume most of the responsibilities and privileges of a Primary Market Maker under the ISE Rules with respect to any series in which the appointed Primary Market Maker fails to have a quote in the ISE System.⁶

The Exchange also proposes to correct an inconsistency in its rules. In April 2004, the Exchange received Commission approval of a proposed rule change that allowed it to disseminate a quotation for less than ten contracts.⁷ Because the options intermarket linkage plan and the Exchange's rules continued to require the Exchange to guarantee that the Firm Customer Quote Size ("FCQS") and Firm Principal Quote Size ("FPQS") would be at least 10 contracts, ISE Rule 803(c)(1) was amended to provide that the Primary Market Maker had the obligation to buy or sell the number of contracts necessary to provide an execution of at least 10 contracts to incoming linkage orders when the Exchange's disseminated market quotation was for less than 10 contracts.⁸

In August 2004, the intermarket linkage plan was amended to provide that the 10 contract minimum FCQS and FPQS does not apply when the Exchange is disseminating a quotation of fewer than 10 contracts.⁹ In October 2004, the Exchange, and all of the other options exchanges, received approval for changes to their linkage rules to implement this change to the

intermarket linkage plan.¹⁰ Accordingly, the Primary Market Maker no longer is required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is for less than 10 contracts. However, the Exchange neglected to remove the language in ISE Rule 803(c)(1) at the time the changes to the linkage rules were approved, thereby creating an inconsistency in the ISE Rules. The Exchange now proposes to delete the language in ISE Rule 803(c)(1) as a purely non-substantive clean-up of the ISE Rules.

III. Discussion

After careful review, 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.¹¹ In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be 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 to protect investors and the public interest.

The Commission believes that the proposal should help to ensure that the functions of the Primary Market Maker are performed in an uninterrupted fashion even when a Primary Market Maker experiences difficulties that cause it to remove its quotes from the market. In particular, the Commission believes that the proposed rule change should help to ensure that the Back-Up Primary Market Makers would provide continuous quotations in all of the series of the options classes in a manner consistent with the obligations of the Primary Market Maker, set forth in ISE Rule 803. Further, this proposed rule change should reduce the number of non-firm quotes or "fast market" states disseminated by the ISE.¹³

The ISE proposal to indicate that a Primary Market Maker is not required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is less than 10 contracts is of a clarifying and technical nature. Accordingly, based on the foregoing the Commission believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-ISE-2005-50) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53424; File No. SR-NSCC-2005-17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify Its Rules and Procedures Related to the Collection of Commission Payments

March 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2006, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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

The purpose of this proposed rule change is to modify NSCC's Rules and Procedures with regard to the collection of commission payments.

Dumler, Attorney, Division, Commission on November 2, 2005.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁵ If there is more than one eligible member quoting in the series, the ISE System would automatically switch to the member with the largest offer in the series.

⁶ A Competitive Market Maker would not become subject to the requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under ISE Rule 804(e)(2), by acting as a Back-Up Primary Market Maker.

⁷ See Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (the "Real Size Filing").

⁸ See *id.*

⁹ See Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 24, 2004).

¹⁰ See Exchange Act Release Nos. 50562 (October 19, 2004), 69 FR 62925 (October 28, 2004) and 50587 (October 25, 2004), 69 FR 63417 (November 1, 2004).

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ The Commission notes that the Exchange represents that most interruptions in Primary Market Maker quoting are very brief in duration. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, Marc F. McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission and Johnna B.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

As part of ongoing efforts to increase processing efficiencies, NSCC is proposing to modify its Rule 16, "Settlement of Commissions," to further standardize and automate the processing of commission bill payments.

In 2001, NSCC modified Rule 16 to implement the use of Automated Clearing House ("ACH") wire transfers when making payments to non-clearing members utilizing the commission bill service. As a part of NSCC's move to payment of credits by ACH wire transfer, all non-clearing members were required to execute appropriate ACH documentation in order to receive their credit payments.³ While NSCC automated the payment of funds from NSCC to non-clearing members, the collection of monies owed to NSCC by non-clearing members was not automated. Non-clearing members continue to pay commission bill settlement funds to NSCC by checks.

NSCC proposes to further modify Rule 16 to require the use of ACH preauthorized payments in the collection of funds from those non-clearing members that are indebted to NSCC as a result of utilizing the service. Accordingly, within the timeframe determined by NSCC, NSCC would debit the bank account designated by each non-clearing member an amount equal to the debit owed by the non-clearing member to NSCC.⁴ All non-clearing members would be required to

execute appropriate ACH documentation.

In addition to the above change, NSCC would also make a technical correction to Rule 16(3) to conform the Rule to practice. NSCC would eliminate text that provides that non-clearing members deliver information to NSCC on the 10th day of each month, as this practice has been discontinued.

Implementation

NSCC will work with New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") staff to obtain new ACH documentation from all non-clearing members that currently utilize the commission bill service. By March 15, 2006 (or within two weeks of approval by the SEC of this rule filing, whichever is later) NSCC will begin implementing the ACH debit process on a rolling-basis. NSCC anticipates that collection of funds by check from non-clearing members to NSCC would be discontinued in its entirety by the end of the second quarter of 2006.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to NSCC because it will facilitate the prompt and accurate payment of commission bill transactions, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have any 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

NSCC has worked with and has received the support of the NYSE and AMEX with respect to these proposed changes. No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty-five 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 ninety 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 self-regulatory organization 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-NSCC-2005-17 in 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-NSCC-2005-17. 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 NSCC and on NSCC's Web site, <http://www.nsc.com/legal>. 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

² The Commission has modified the text of the summaries prepared by NSCC.

³ Securities Exchange Act Release No. 44550 (July 12, 2001), 66 FR 37509 (July 18, 2001) [File No. SR-NSCC-2001-08].

⁴ Currently, commission bill settlement takes place on the 15th day of each month or on the next preceding business day if the 15th is not a business day.

⁵ 15 U.S.C. 78q-1.

should refer to File Number SR-NSCC-2005-17 and should be submitted on or before April 3, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53426; File No. SR-NYSE-2006-15]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to the Restated Certificate of Incorporation of NYSE Regulation, Inc.

March 7, 2006.

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 March 6, 2006, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 restated certificate of incorporation of NYSE Regulation ("NYSE Regulation") to comply as to form with the requirements of the Not-for-Profit Corporation Law of the State of New York ("N-PCL") and to specifically recite the ways in which the restated certificate of incorporation modifies the certificate of incorporation as originally filed under the N-PCL.⁵

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 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 this rule filing in connection with its proposed merger with Archipelago Holdings, Inc. ("Archipelago"), as a result of which the businesses of the Exchange and Archipelago will be held under a single, publicly traded holding company named NYSE Group, Inc. ("NYSE Group"). Following the merger, the Exchange's current businesses and assets will be held in three separate entities affiliated with NYSE Group—New York Stock Exchange LLC, NYSE Market, Inc. and NYSE Regulation. The Commission has approved the Exchange's rule filing in connection with the merger ("Merger Filing")⁶ and the merger is scheduled to close on March 7, 2006.⁷

NYSE Regulation is a corporation organized and existing under the N-PCL. The restated certificate of incorporation of NYSE Regulation was included in Exhibit 5 to the Merger

the modifications is with respect to the certificate of incorporation as originally filed under the N-PCL. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 6, 2006 ("Telephone Conversation").

⁶ See Securities Exchange Act Release No. 53382 (February 27, 2006) 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77).

⁷ The Commission notes that the Exchange included in the proposed rule change two different dates for the schedule closing date of the merger, March 7, 2006 and March 8, 2006. The Commission staff clarified with the Exchange that the scheduled closing date of the merger is March 7, 2006. Telephone Conversation.

Filing as approved. However, subsequent to the Merger Filing's approval, the Secretary of State of New York has informed the Exchange that it will not accept a filing of the restated certificate of incorporation unless certain technical changes are made to comply as to form with the requirements of the N-PCL and to specifically recite the ways in which the restated certificate of incorporation modifies the certificate of incorporation as originally filed under the N-PCL. The changes do not affect the substance of the restated certificate of incorporation as approved by the Commission in any way. The Exchange needs this proposed rule change to be effective prior to the consummation of the merger, as it must file the restated certificate of incorporation with the Secretary of State of the State of New York before the closing of the merger, as contemplated by the Merger Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act⁸ 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

Written comments 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, the proposed rule change has become

⁸ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ At the request of the Exchange, the Commission staff revised the text to clarify that the reference to