

or delivery at the end of the quarter. In such case, the customer would receive a quarterly statement even though it had consented not to receive one. BNP contended that the customer would be confused by such statement and the statement would not benefit the customer.<sup>12</sup>

The SIA letter supported the proposed amendment to NYSE Rule 409 but commented that the proposal would unnecessarily and impractically require individual firms to retain a record that reflects each institution's consent to the suspension of statements. SIA proposed that the NYSE interpret proposed amended Rule 409 to make an institution's notification to Omgeo<sup>13</sup> and Omgeo's population of their database sufficient for recordkeeping purposes.

### III. NYSE's Response to Comments

In filing Amendment No. 2, NYSE addressed comments on the proposal by revising proposed amended Rule 409(a)(3) to confirm that transactional positions, such as those arising from a fail to receive or deliver money or securities, will not be deemed money or security positions for purposes of this rule. This proposed change is intended to avoid the possibility raised by BNP that firms could be in violation of the rule due to a failed receipt or delivery at the end of a quarter.

### IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act.<sup>15</sup> Section 6(b)(5) of the Act requires, among other things, that the rules of an 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 national market system, and in general, to protect investors and the public interest. The

Commission believes that the proposed rule change, as amended, should remove impediments to and perfect the mechanisms of a free and open market and national market system by removing an unnecessary and potentially costly obligation on firms to deliver quarterly account statements to DVP/RVP customers. At the same time, the proposal maintains certain investor protections (*i.e.*, requiring NYSE member organizations to obtain affirmative consent to the suspension of quarterly account statements, preserving the ability of customers to obtain particular statements upon request and to resume receipt of statements promptly upon request, and precluding member organizations from unilaterally terminating delivery of such statements). Therefore, the Commission believes the proposal is consistent with the Exchange Act.

#### *Accelerated Approval of Amendment No. 2*

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change, as amended, prior to the thirtieth day after Amendment No. 2 is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>16</sup> Amendment No. 2 clarifies that transactional positions, such as those arising from a fail to receive or deliver money or securities, will not be deemed money or security positions for purposes of the proposed amended rule. The Commission finds that Amendment No. 2 appropriately addresses a concern raised by a commenter.<sup>17</sup> For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 2.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>18</sup> that the proposed rule change (SR–NYSE–2005–90), as amended by Amendment No. 1 thereto, be, and hereby is, approved, and that Amendment No. 2 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. E6–20227 Filed 11–28–06; 8:45 am]  
**BILLING CODE 8011–01–P**

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See BNP letter, footnote 6, *supra*.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54796; File No. SR–NYSEArca–2006–85]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Six-Month Pilot Program To Adopt New Initial and Continued Listing Standards

November 20, 2006.

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 November 17, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as a six-month pilot, until May 29, 2007.

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

The Exchange proposes, on a six-month pilot program basis (the “Pilot Program”), to make significant revisions to its initial and continued financial listing standards for operating companies.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site at [www.nysearca.com](http://www.nysearca.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 self-regulatory organization 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

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Commission notes that the proposed changes are primarily to the initial and continued listing standards of common stock and common stock equivalent securities, preferred stock and similar issues and secondary classes of common stock. Some changes are also being made to the listing standards for bonds and debentures, warrants, contingent value rights, other securities, and index-linked exchangeable notes.

<sup>12</sup> In its comment, discussed below, SIA does not believe that condition (3) should apply to those accounts that show a money or position balance at the end of the quarter because of unsettled items or a “DK.”

<sup>13</sup> According to SIA, Omgeo, LLC is the leading industry provider of institutional processing services. SIA believes that other vendors would also provide such indicators.

<sup>14</sup> In approving this proposed rule change, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

the places specified in Item III below. The self-regulatory organization 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

On March 7, 2006, Archipelago Holdings, Inc. and the New York Stock Exchange, Inc. completed their merger (the "Merger"), creating NYSE Group, Inc. ("NYSE Group"). NYSE Group is a holding company that operates, among other subsidiaries, two securities exchanges: New York Stock Exchange LLC ("NYSE") and NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation").<sup>4</sup> NYSE Arca Equities conducts its equities trading operations through its equities trading facility, NYSE Arca, L.L.C. (also referred to as the "NYSE Arca Marketplace").

In connection with the Merger, NYSE Arca Marketplace examined all aspects of its listings program, and as a result, determined to make substantial modifications and enhancements to its listing standards. Accordingly, with this filing, NYSE Arca is proposing significant revisions to the initial and continued listing criteria applicable to operating companies set forth in NYSE Arca Equities Rule 5, completely replacing the current tiered structure with a single set of numerical and

<sup>4</sup> The Commission notes that NYSE Arca is actually the registered national securities exchange and NYSE Arca Equities is a wholly-owned subsidiary of NYSE Arca.

financial requirements.<sup>5</sup> The principal objectives of these proposed revisions are to upgrade the financial condition, shareholder interest, and stature of issuers listing on NYSE Arca Marketplace; more closely align NYSE Arca Marketplace's listing standards and structure with the NYSE; and enhance NYSE Arca Marketplace's competitive position.<sup>6</sup>

NYSE Arca Equities Rule 5.1(a) provides that the Board of the Directors of the Exchange will make determinations as to whether to list securities or admit securities to unlisted trading privileges on the Exchange. Similarly, current NYSE Arca Equities Rule 5.2(a) provides that the prescribed forms of applications to list securities on the Exchange will be determined by the Board of Directors. This filing proposes to amend both of the aforementioned requirements to state that the Exchange will make such determinations. Such decisions will be made by the chief executive officer of the Exchange or by staff of the Exchange pursuant to authority delegated by the chief executive officer. In addition, NYSE Arca Equities Rule 5.2(a) would be amended to state that the Exchange may deny listing or apply additional or more stringent criteria based on any

<sup>5</sup> This filing relates only to quantitative (financial) original and continued listing standards applicable to operating companies. It does not relate to listing standards for corporate governance, exchange traded funds, open and closed-end funds, commodity-based trusts, trust issued receipts, portfolio depository receipts, investment company units or other types of structured products. See *supra* note 3.

<sup>6</sup> The Commission recently approved substantial revisions to NYSE Arca's listing fees. See Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR-PCX-2006-16).

event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination could be made even if the company meets the standards set forth below.

*Summary of Current and Proposed Initial Listing Standards*

*Summary of Current Initial Listing Standards for Operating Companies*

Currently, the NYSE Arca Marketplace has a two-tier listing structure, classifying listed securities as either Tier I or Tier II. For their common stock to qualify for initial listing as a Tier I security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.2(c).<sup>7</sup> To qualify for initial listing as a Tier II security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.2(k). Both Rule 5.2(c) and Rule 5.2(k) also provide that an issuer may qualify under either a Basic or an Alternate set of listing criteria. To be eligible to list, an issuer need only satisfy all of the criteria under one of these four separate sets of standards.<sup>8</sup>

<sup>7</sup> In addition to the numerical criteria set forth in Rules 5.2(c) and 5.2(k), issuers must also satisfy certain qualitative requirements, including corporate governance-related standards set forth in NYSE Arca Equities Rule 5.3. These corporate governance rules are not the subject of this proposal.

<sup>8</sup> NYSE Arca Equities Rule 5.2(a) provides that approval of listing applications is a matter solely within the discretion of NYSE Arca Equities, and the fact that an issuer may meet the applicable listing requirements does not necessarily mean that its application will be approved.

These requirements are:

	Tier I (Rule 5.2(c))		Tier II (Rule 5.2(k))	
	Basic	Alternate	Basic	Alternate
Net tangible assets <sup>9</sup> .....			\$2,000,000	
Net worth <sup>10</sup> .....	\$4,000,000	\$12,000,000		\$8,000,000
Pre-tax income <sup>11</sup> .....	\$750,000			
Net income <sup>12</sup> .....			\$100,000	
Public float (shares) .....	500,000	1,000,000	500,000	1,000,000
Public beneficial holders <sup>13</sup> .....	800 or 400	400	500	500
Market value .....	\$3,000,000	\$15,000,000	\$1,500,000	\$2,000,000
Operating history .....		3 years	3 years	
Price <sup>14</sup> .....	\$5	\$3	\$3	\$1

*Proposed Initial Listing Standards for Common Stock and Common Stock Equivalent Securities*

With this filing, NYSE Arca is proposing to eliminate the Tier I and II classifications and replace, in their entirety, the current Tier I and Tier II numerical standards for initial listing for common stock set forth in NYSE Arca Rules 5.2(c) and (k), respectively. Companies whose common stock is listed with a Tier II designation will be able to remain listed under the existing Tier II rules as long as they are in compliance with the maintenance requirements of Arca Equities Rule 5.5(h). However, the Exchange will no longer list any new issuers or additional classes of securities with a Tier II designation.

In place of the existing Tier I and Tier II standards, this filing proposes to

<sup>9</sup>NYSE Arca Equities Rule 5.1(b)(10) defines “net tangible assets” as the amount of funds remaining after deducting intangible assets from stockholders’ equity. This rule further provides that intangible assets include, but are not limited to, goodwill, patents, copyrights, trademarks, leaseholds, franchises, licenses, permits, research and development costs, organization costs, and similar types of property rights.

<sup>10</sup>NYSE Arca Equities Rule 5.1(b)(9) defines “net worth” as total assets (excluding the value of goodwill) less total liabilities.

<sup>11</sup>NYSE Arca Equities Rule 5.2(c)(4) provides that an issuer must have pre-tax income from continuing operations of at least \$750,000 in the last fiscal year or two of the last three fiscal years.

<sup>12</sup>NYSE Arca Equities Rule 5.2(k)(4) provides that an issuer must have net income from continuing operations of at least \$100,000 in the last fiscal year or in two of the last three fiscal years, or total net tangible assets of \$2,500,000.

<sup>13</sup>NYSE Arca Equities Rule 5.2(c)(2) provides that issuers must have at least 800 public beneficial holders if the issuer has at least 500,000 and less than 1,000,000 shares publicly held, or a minimum of 400 public beneficial holders if the issuer has either: (i) At least 1,000,000 shares publicly held; or (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares for the six months preceding the date of application.

<sup>14</sup>NYSE Arca Equities Rules 5.2(c)(5) and 5.2(k)(5) provide that the issuer must maintain the minimum price for the majority of business days for the most recent six-month period prior to the date of application, and the price must be at or above the minimum per share at the time of application.

require for initial listing that, at the time of initial listing, the listed class of common stock or common stock equivalent securities<sup>15</sup> shall have:

- At least 1.1 million publicly held shares.
- A closing price per share of \$5 or more.
- A minimum of 400 round lot shareholders.

In addition, the requirements of one of Standards One, Two or Three below must be met:

*Standard One*

- The issuer of the security had annual income from continuing operations before income taxes of at least \$1 million in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

- The market value of publicly held shares is at least \$8 million.

- The issuer of the security has stockholders’ equity of at least \$15 million.

*Standard Two*

- The issuer of the security has stockholders’ equity of at least \$30 million.

- The market value of publicly held shares is at least \$18 million.

- The issuer has a two-year operating history.

*Standard Three*

- The market value of publicly held shares is at least \$20 million.

- The issuer has:
  - A market value of listed securities of \$75 million (currently traded issuers must meet this requirement and the \$5 closing price requirement for 90 consecutive trading days prior to applying for listing); or

<sup>15</sup>Proposed NYSE Arca Equities Rule 5.1(b)(26) defines common stock equivalent as “ordinary shares, ADRs, American Depository Shares, global depository shares, depository shares, shares or certificates of beneficial interest of trusts, and other similar issues that have the same characteristics of common stock.”

- Total assets and total revenue of \$75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

In evaluating compliance with these standards, the Exchange will consider amounts contained in a company’s pro forma financial statements provided in a filing with the Commission pursuant to Commission rules and regulations governing Article 11 “Pro forma information of Regulation S-X Part 210—Form and Content of and Requirements for Financial Statements.” This shall include, without limitation, adjustments relating to the proceeds of an offering. In the case of foreign private issuers (as such term is defined in Rule 3b-4 under the Act), the Exchange will take into account global market capitalization in evaluating compliance with the market capitalization requirements of this rule.

This revised rule shall apply to common stock and common stock equivalents, including, but not limited to: Ordinary shares, American Depository Receipts (“ADRs”), American Depository Shares, global depository shares, depository shares, shares or certificates of beneficial interest of trusts, and other similar issues that have the same characteristics of common stock.

*Summary of Current Initial Listing Standards for Preferred Stock and Similar Issues*

Currently, as set forth in NYSE Arca Equities Rule 5.2(d), in the case of preferred stock and similar issues, the following listing requirements among others must be met:

- The issuer must meet the net worth and earnings requirements as set forth in the Tier I Basic Listing Requirements under Rule 5.2(c), and must meet and appear to be able to service the dividend requirements for the preferred stock.

- If the company’s common stock is traded on NYSE Arca or on either the American Stock Exchange LLC

(“Amex”) or NYSE, the following public distribution requirements must be met: At least 100,000 preferred shares publicly held and an aggregate market value of at least \$2,000,000, and a minimum closing bid price of \$10.

- If the related common stock is not traded on any of the above referenced exchanges then the requirements are: At least 400,000 preferred shares publicly held and an aggregate market value of at least \$4,000,000, and a minimum closing bid price of \$10. At least 800 public beneficial holders of 100 shares or more shall also be required.

*Proposed Initial Listing Standards for Preferred Stock and Similar Issues and Secondary Classes of Common Stock*

For initial listing, if the common stock or common stock equity equivalent

security of the issuer is listed on the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the issue shall have:

- At least 200,000 publicly held shares;
- A market value of publicly held shares of at least \$4,000,000;
- A minimum closing price per share of \$5;
- A minimum of 100 round lot shareholders.

Alternatively, in the event the issuer’s common stock or common stock equivalent security is not listed on either the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the preferred stock and/or secondary class of common stock may be traded on the Exchange so long as the security

satisfies the initial listing criteria for common stock.

*Summary of Current and Proposed Continued Listing Standards*

*Current Continued Listing Standards for Common Stock*

To qualify for continued listing as a Tier I security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.5(b). To qualify for continued listing as a Tier II security, issuers must satisfy, among other things, the numerical criteria set forth in NYSE Arca Equities Rule 5.5(h).

These requirements are:

	Tier I (Rule 5.5(b))	Tier II (Rule 5.5(h))
Net tangible assets or Net worth .....	\$2,000,000 or 4,000,000 <sup>16</sup> .....	\$500,000 or 2,000,000.
Public float (shares) .....	200,000 .....	300,000.
Public beneficial holders .....	400 <sup>17</sup> .....	250.
Market value .....	\$1,000,000 .....	\$500,000.
Bid price <sup>18</sup> .....	\$3 .....	\$1.

*Proposed Continued Listing Standards for Common Stock and Common Stock Equivalent Securities*

With this filing, NYSE Arca is proposing to eliminate the two tiered structure and replace, in their entirety, the current Tier I and Tier II numerical standards for continued listing for common stock set forth in NYSE Arca Rules 5.5(b) and (h), respectively, except that Rule 5.5(h) will continue to be applied to common stocks listed with a Tier II designation prior to the effectiveness of this filing. In their place, this filing proposes in new Rule 5.5(b) to require for continued listing that a listed common stock must meet the criteria set forth in either Continued Listing Standard One or Continued Listing Standard Two below to continue to remain listed on the Exchange. All of the existing Tier I issuers and securities currently meet the requirements of the proposed continued listing standards. As such, the Exchange does not need to provide a phase in period for compliance with the new rules and will be able to apply them as soon as the Commission approves the Pilot Program.

Under the proposed new standards, a listed common stock must meet each of the criteria set forth in Continued Listing Standards One or Two below to continue to remain listed on the Exchange.

*Continued Listing Standard One*

- 750,000 publicly held shares;
- Market value of publicly held shares of \$5 million;
- The issuer has stockholders’ equity of at least \$10 million; and
- 400 shareholders of round lots.

*Continued Listing Standard Two*

- The issuer has:
  - A market value of listed securities of \$50 million or, in the case of non-U.S. companies, a global market capitalization of \$50 million; or
  - total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.
- 1,100,000 shares publicly held;
- Market value of publicly held shares of \$15 million; and
- 400 shareholders of round lots.

In the case of a non-U.S. company with ADRs listed on the Exchange, the term “global market capitalization”

means (x) the closing sale price per share of the common stock or common stock equivalent security underlying the ADRs multiplied by (y) the number of shares of such common stock or common stock equivalent security outstanding worldwide (including any shares underlying outstanding ADRs).

In addition, an issuer will also be considered to be below compliance standards if the average closing price of a security is less than \$1.00 over a consecutive 30 trading-day period. Once notified, the issuer must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. The issuer must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. Once a U.S. issuer is notified that it is below compliance, it is required to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange concurrent with filing notice of such non-compliance with the SEC as required by Form 8-K. Once a foreign private issuer is notified that it is below compliance, the issuer has 30 days to issue a press

<sup>16</sup> If the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years, then it must have a minimum of \$2 million in net worth. If the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal

years, then it must have a minimum of \$4 million in net worth.

<sup>17</sup> Alternatively, an issuer must have at least 300 beneficial holders of 100 shares or more.

<sup>18</sup> NYSE Arca Equities Rules 5.5(b) and (h) provide that NYSE Arca Equities may waive the minimum bid price requirements upon

consideration of market conditions, the issuer’s capitalization, the number of outstanding and publicly held shares, and any other factors NYSE Arca Equities deems appropriate. This proposal eliminates this provision and replaces it with the “cure period” set forth in revised Rule 5.5(b).

release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the foreign private issuer fails to issue this press release during the allotted 30 days, the Exchange will issue the requisite press release. In the event that at the expiration of the six-month cure period, both a \$1.00 share price and a \$1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures.

Notwithstanding the foregoing, if an issuer determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days.

Notwithstanding the foregoing, if the subject security is not the primary trading common equity security of the issuer (e.g., a tracking stock or a preferred class), as discussed in more detail below, the Exchange may determine whether to apply this test to such security after evaluating the financial status of the issuer.

#### *Continued Listing Standards for Preferred Stock and Similar Issues and Secondary Classes of Common Stock*

NYSE Arca proposes to replace its existing continued listing standards for preferred stock and similar issues with the requirements described below and to also apply those requirements to secondary classes of common stock.

For continued listing, if the common stock or common stock equity equivalent security of the issuer is listed on the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the issue shall have:

- At least 100,000 publicly held shares;
- A market value of publicly held shares of at least \$1,000,000;
- A minimum closing price per share of \$1;
- A minimum of 100 round lot shareholders.

If the preferred stock or similar issue is the issuer's only security listed on the Exchange, after evaluating the financial status of the issuer, the Exchange may choose to apply the six-month cure period provided under the proposed common stock continued listing

standards to any failure to maintain a \$1 closing price.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either the Exchange or on the NYSE, The Nasdaq Global Market or the Amex, the preferred stock and/or secondary class of common stock may be listed on the Exchange so long as the security satisfies the continued listing criteria for common stock.

#### *Other Securities Pre-Tax Income Requirement*

To conform to the parallel provision in Standard One of the proposed common stock initial listing standards, the Exchange proposes to increase the pre-tax income from continuing operations standard of NYSE Arca Equities Rule 5.2(e) ("Bonds and Debentures"), NYSE Arca Equities Rule 5.2(g) ("Contingent Value Rights"), NYSE Arca Equities Rule 5.2(j)(1) ("Other Securities") and NYSE Arca Equities Rule 5.2(j)(4) ("Index-Linked Exchangeable Notes") from \$750,000 to \$1 million.<sup>19</sup>

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>21</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### *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 on the proposed rule change were neither solicited nor received.

<sup>19</sup> The Commission notes that, among other things, the Exchange proposes other clarifying changes, additional definitions, and different net worth standards for bonds and debentures, contingent value rights, other securities, and index-linked exchangeable notes.

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

### III. 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-2006-85 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-NYSEArca-2006-85. 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-NYSEArca-2006-85 and should be submitted on or before December 20, 2006.

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

The Commission finds that the proposed rule change 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to make significant changes to its initial and continued listing standards. Among other things, the Exchange would no longer have a two-tiered listing structure. The Exchange represents that all existing Tier I issuers would meet one of the proposed continued listing standards set forth in proposed NYSE Arca Equities Rule 5.5(h). Further, the proposal would include a grandfather clause to ensure that the existing Tier II issuers would have the option to remain listed on the Exchange for as long as they meet the continued listing standards. The Commission believes that the proposal is designed not to permit unfair discrimination among issuers, since the proposal would treat all prospective issuers and existing Exchange-listed issuers equally.

Although the proposal significantly restructures and changes NYSE Arca listing standards, as discussed below, the changes are substantially similar to The Nasdaq Global Market initial and continued listing standards. Based on this, the Commission believes it is reasonable for the Exchange to determine that companies that meet these new listing standards are appropriate for inclusion and continued listing on NYSE Arca. For these reasons, as discussed in more details below, the Commission finds that the proposal is consistent with the requirements of the Act.

#### A. Initial Listing Standards

As proposed, the Exchange's common stock or common stock equivalent securities<sup>24</sup> initial listing standards would be significantly modified and the Exchange would no longer have Tier I or Tier II securities. Common stock or common stock equivalent securities would need: (1) At least 1.1 million publicly held shares; (2) a closing price

per share of \$5 or more; and (3) a minimum of 400 round lot shareholders, in addition to meeting the additional standards set forth in one of three alternatives.<sup>25</sup> Among other things, Standard 1 and Standard 2 would replace the current net worth requirement with an increased stockholders' equity requirement of \$15,000,000 and \$30,000,000, respectively. In addition, under Standard 3, the current net worth requirement would be eliminated and the issuer would be required to have a market value of listed securities of \$75,000,000 or total assets and total revenue of \$75,000,000 each for the most recently completed fiscal year or two of the last three most recently completed fiscal years. The Commission notes that the proposed initial listing standards for common stock or common stock equivalent securities are substantially similar to The Nasdaq Global Market initial listing standards.<sup>26</sup>

The Exchange's proposed preferred stock (and similar issues) and secondary classes of common stock initial listing standards would also be significantly modified. The Exchange would eliminate the current net worth and earnings requirements, and increase the current publicly held shares requirement and market value requirement. The Exchange would also lower the current bid price requirement. As proposed, if the common stock or common stock equivalent security of the issuer is listed on the Exchange, NYSE, The Nasdaq Global Market, or Amex, these securities must have: (1) At least 200,000 publicly held shares; (2) a market value of publicly held shares of at least \$4 million; (3) a closing price per share of \$5 or more; and (4) a minimum of 100 round lot shareholders.<sup>27</sup> If the common stock or common stock equivalent security of the issuer is not listed on the Exchange, NYSE, The Nasdaq Global Market, or Amex, these securities must satisfy the initial listing standards for common stock.<sup>28</sup> The Commission notes that these requirements are substantially similar to The Nasdaq Global Market initial listing standards.<sup>29</sup>

The Exchange also proposes to amend the initial listing standards for bonds and debentures and contingent value rights by increasing the net worth requirement and pre-tax income requirement consistent with the proposed common stock initial listing

standards. In addition, the Exchange proposes to amend the initial listing standards for other securities and index-linked exchangeable notes to add a pre-tax income requirement, consistent with the pre-tax income requirements of the common stock initial listing standards. The pre-tax income requirement for these securities is being raised from \$750,000 to \$1,000,000.

Based on the foregoing, the Commission believes that the proposed amendments to the NYSE Arca Equities initial listing standards are consistent with the requirements of the Act.

#### B. Continued Listing Standards

The Commission believes that the proposed amendments to the NYSE Arca Equities continued listing standards are consistent with the requirements of the Act. The Exchange proposes to amend the common stock or common stock equivalent securities continued listing standard, by requiring that common stock must meet the standards set forth in one of two alternatives.<sup>30</sup> Both common stock continued listing standards would increase the current publicly held shares requirement. In addition, the current \$1,000,000 market value requirement would be increased to a \$5,000,000 market value of publicly held shares requirement under Continued Listing Standard 1 and \$15,000,000 under Continued Listing Standard 2. Continued Listing Standard 1 would replace the current net worth requirement of \$2,000,000 or \$4,000,000 with a higher stockholders' equity requirement of \$10,000,000. Continued Listing Standard 2 would eliminate the current net worth requirement, but require companies to maintain a market value of listed securities of \$50,000,000 (in the case of non-U.S. companies, a global market capitalization of \$50,000,000), or total assets and total revenue of \$50,000,000 each for the most recently completed fiscal year or two of the last three most recently completed fiscal years. In addition, the Exchange would require under both common stock continued listing standards that all common stock have an average closing price of at least \$1.00 over a consecutive 30-day trading period, instead of the current \$3 bid price requirement.<sup>31</sup> The Commission notes that the proposed continued listing standards for common stock, common stock equivalent securities and similar issues are substantially similar

<sup>22</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rules' 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> See proposed NYSE Arca Equities Rule 5.1(b)(26).

<sup>25</sup> See proposed NYSE Arca Equities Rule 5.2(c).

<sup>26</sup> See Nasdaq Rule 4420(a)-(c).

<sup>27</sup> See proposed NYSE Arca Equities Rule 5.2(d).

<sup>28</sup> See proposed NYSE Arca Equities Rule 5.2(d).

<sup>29</sup> See Nasdaq Rule 4420(k).

<sup>30</sup> See proposed NYSE Arca Equities Rule 5.5(b).

<sup>31</sup> As noted above, issuers would have six months to cure this deficiency. See proposed NYSE Arca Equities Rule 5.5(b).

to The Nasdaq Global Market continued listing standards.<sup>32</sup>

The Exchange also proposes to amend the preferred stock (and similar issues) and secondary classes of common stock continued listing standards.<sup>33</sup> The Exchange would eliminate the current net worth requirement and continuing operations requirements. In addition, the proposed new preferred continued listing standards would contain a new \$1 bid price requirement. The Commission notes that the proposed continued listing standards for preferred stock and similar issues and secondary classes of common stock are substantially similar to The Nasdaq Global Market continued listing standards.<sup>34</sup>

### C. Other Changes

The proposed rule change would permit the Exchange, rather than its board of directors, to approve securities for listing and to prescribe the form of listing applications.<sup>35</sup> In particular, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination could be made even if the company meets the standards set forth below. The Commission believes that it is reasonable for the Exchange, based upon its experience, to determine whether the security of a company would be appropriate for inclusion on NYSE Arca. The Commission notes that this amendment is similar to NYSE's listing standards.<sup>36</sup> Further, with respect to the continued listing standards of all securities, the Exchange proposes to require all issuers to comply with the Exchange's corporate governance qualitative standards, rather than only the independent directors/board committees requirement in current NYSE Arca Equities Rule 5.3(k).<sup>37</sup> The Commission believes that these amendments are consistent with the requirements of the Act.

### D. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,<sup>38</sup> the Commission may not approve

any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Exchange has requested the Commission find good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**.

The Commission believes that it is reasonable to grant accelerated approval to allow for the efficient administration of the Exchange's initial and continued listing programs as promptly as possible. The Commission notes that the proposed listing standards, while significantly different than the Exchange's current listing standards, are substantially similar to The Nasdaq Global Market, which the Commission previously approved. In addition, the Commission notes that the proposed listing standards would be in effect only as a pilot program for a six-month period.<sup>39</sup> Accordingly, the Commission believes that there is good cause, pursuant to Sections 6(b)(5) of the Act<sup>40</sup> and 19(b)(2) of the Act,<sup>41</sup> to grant accelerated approval to the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**.

### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.<sup>42</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> that the proposed rule change (SR-NYSEArca-2006-85), is hereby approved on an accelerated basis, as a six-month pilot, until May 29, 2007.

<sup>39</sup>In any request under Section 19(b) of the Act for permanent approval or an extension of the pilot period, the Exchange may wish to report on the operations of the new standards during the pilot period.

<sup>40</sup> 15 U.S.C. 78f(b)(5).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 15 U.S.C. 78f(b)(5). The staff of the Division of Market Regulation ("Staff") would not recommend enforcement action to the Commission under Rules 15g-2 through 15g-9 under the Act if broker-dealers treat equity securities listed pursuant to the initial and continued listing requirements set forth in amended NYSE Arca Equities Rule 5 as meeting the exclusion from the definition of penny stock contained in Rule 3a51-1 under the Act pursuant to paragraph (a)(2) thereof. In taking this position, the Staff notes in particular that these amended listing requirements are equivalent, in all material respects, to the listing requirements of the The Nasdaq Global Market.

<sup>43</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-20211 Filed 11-28-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54793; File No. SR-OCC-2006-20]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accelerate the Expiration Date of American-Style Equity Options That Have Been Adjusted To Call for Cash-Only Delivery

November 20, 2006.

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 October 26, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 the proposed rule change is to accelerate the expiration date of American-style equity options that have been adjusted to call for cash-only delivery to the earliest practicable regular expiration date. OCC currently has such authority with respect to European-style options that have been so adjusted.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B),

<sup>44</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>32</sup> See Nasdaq Rule 4450(a)-(b).

<sup>33</sup> See proposed NYSE Arca Equities Rule 5.5(c).

<sup>34</sup> See Nasdaq Rule 4450(h).

<sup>35</sup> See proposed NYSE Arca Equities Rule 5.1(a) and 5.2(a).

<sup>36</sup> See NYSE Listed Company Manual Section 101.00.

<sup>37</sup> See also NYSE Arca Equities Rule 5.5(k), which sets forth other reasons for suspending or delisting securities on the Exchange.

<sup>38</sup> 15 U.S.C. 78s(b)(2).