SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54887; File No. SR–NYSE–2006–103]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Amendment to the Earnings Standard Included in the Exchange's Financial Listing Criteria

December 6, 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 November 30, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] 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

NYSE proposes to include an alternative method for meeting the earnings standard alternative in its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Listed Company Manual (the ''Manual'').

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. NYSE 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 proposes to include an alternative method for meeting the earnings standard alternative in its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Manual.

Section 102.01C of the Manual allows companies to list under the Exchange's domestic listing criteria by meeting one of three alternative standards. The earnings standard allows a company to list if it has pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, adjusted for certain specified items, totaling at least $10,000,000 in the aggregate for the last three fiscal years together with a minimum of $2,000,000 in each of the two most recent fiscal years, and positive amounts in all three years. Under certain circumstances, the Exchange may qualify a company based on the most recent completed nine months in lieu of the earliest fiscal year otherwise required by the applicable standard, in circumstances where a recapitalization transaction or significant change in operations has rendered irrelevant the financial position of the company in that third year back and the company would meet the requirements of Section 102.01C based on the most recent nine months and the two immediately preceding fiscal years.

The proposed amendment would amend the earnings standard to provide an alternative to the existing requirements. The alternative earnings standard would require total earnings over the three fiscal year period of $12,000,000, with at least $5,000,000 in earnings in the most recently completed fiscal year. The requirement of $2,000,000 in earnings in the middle year would be retained, but the requirement that the company have a positive amount in the earliest fiscal year in the period would be eliminated. The Exchange is proposing to allow companies listing under the proposed alternative earnings standard to use the most recent nine fiscal months instead of the earliest fiscal year, in the limited circumstances in which that approach is permitted under the current earnings test.[5] If a company that listed on the basis of its most recent nine fiscal months does not actually meet the alternative earnings standard upon completion of the full fiscal year and does not at that time meet any of the other initial listing standard options, the Exchange will commence immediate delisting proceedings with respect to that company without the benefit of any of the cure provisions normally available to companies that are below continued listing standards. The amended rule text will also clarify that companies listing under any of the Exchange's financial standards using their most recent nine fiscal months will also be subject to delisting as set forth in the foregoing sentence. Section 802.01B of the Manual is also being amended to include an identical provision.

The proposed amendment would allow the Exchange to list financially sound companies with substantial earnings that would be able to list under the current earnings standard but for losses in the earliest fiscal year of the three-year period. Frequently, that earliest year is unrepresentative of the current financial position of the company, as, for example, it has significantly changed its business model, was in a start-up phase of its development at that time, or has since undergone a recapitalization. The Exchange believes that the proposed alternative earnings standard is as stringent as the existing standard, as it requires $12,000,000 in total earnings over the measurement period rather than the $10,000,000 of the current standard and it requires $5,000,000 in earnings in the most recent fiscal year rather than the $2,000,000 required by the current standard. The Exchange believes that achieving these higher earnings requirements would be at least as good an indication of financial health as is the current earnings standard, even if a company had losses in the furthest back year of the period.

The Exchange believes that its proposed alternative earnings standard is at least as stringent as a standard the Commission has approved previously for another self-regulatory agency. Specifically, the Nasdaq Global Market's Standard Three (''Standard Three'') does not require any demonstration of historical earnings. Standard Three requires $20 million in market value of publicly-held shares, while the Exchange's standards require $60 million in market value of publicly-held shares in connection with initial public offerings or spin-offs and $100 million

[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] *See* Manual Section 102.01C.

for all other companies. A company can list under Standard Three by meeting only one other requirement: a market value of listed securities of $75 million. The Exchange believes that a company that meets its own $60 million in market value of publicly-held shares requirement would most likely also meet Standard Three's market value of listed securities test, as the Exchange requirement does not reflect the ownership interests of officers, directors and holders of more than 10% of the company's stock. The Exchange believes that even without considering its earnings requirements, the proposed alternate earnings standard is as stringent as Standard Three. When the earnings requirement, which is absent from Standard Three is included in the analysis, the proposed Exchange standard is clearly superior.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)[6] of the Act, in general, and Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove 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

Written comments were neither solicited nor received.

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

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, 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 effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has asked the Commission to waive the 30-day operative delay specified in Rule 19b–4(f)(6)(iii).[10] The Exchange asserts that the proposed amendment implements a listing standard that is at least as stringent as a listing standard of another self-regulatory organization previously approved by the Commission. In addition, the Exchange believes that the proposed alternative does not weaken the requirements of its earnings standard as, while a company would now be able to meet the test even if it had incurred a loss in the earliest year of the period, the aggregate earnings requirement for the whole period and the requirement for the most recent year of the period have been significantly increased.

The Commission hereby grants the request to waive the 30-day operative delay.[11] As the NYSE states, the increase in the aggregate earnings requirement for the whole period and the increase in the requirement for the most recent year of the period should help ensure that financially sound companies are listed on the Exchange. In addition, the proposal furthers the public interest by providing that the Exchange will immediately delist, without the benefit of any of its normally available cure provisions,[12] a company listed on the Exchange on the basis of such company's most recently completed nine months,[13] when that company does not subsequently meet the alternative standard upon completion of the full fiscal year and does not meet any of the other initial listing standard options. Based on these facts, and that it appears that the proposed listing requirement is at least as stringent as a listing standard previously approved by the Commission for another market, the Commission believes that waiving the 30 day operative delay is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–103 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–NYSE–2006–103. 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 will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] *See* Manual Sections 802.02 and 802.03.

[13] Section 102.01C of the Manual provides that financial statements covering a period of nine to twelve months shall satisfy the requirement for the most recent fiscal year in cases where the applicant has changed its fiscal year or where there has been a significant change in the company's operations or capital structure. In these cases, the Exchange must conclude that the Company can reasonably be expected to qualify under the regular standard upon completion of its then current fiscal year in lieu of the earliest fiscal year otherwise required by the applicable standard. *See* Manual Section 102.01C.

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–2006–103 and should be submitted on or before January 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21162 Filed 12–12–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54869; File No. SR–NYSEArca–2006–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Extend the Term of Index-Linked Securities

December 4, 2006.

On October 2, 2006, the NYSE Arca, Inc. (''Exchange), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6) to extend the maximum duration of index-linked securities (''Index-Linked Securities'') from ten years to thirty years.[3] The proposed rule change was published for comment in the **Federal Register** on October 27, 2006.[4] The Commission received no comment letters on the proposal.

NYSE Arca Equities Rule 5.2(j)(6) sets forth criteria that the issue and the issuer must meet in order to list and trade Index-Linked Securities at the Exchange.[5] Currently, one of the criteria the Exchange considers for the listing and trading of Index-Linked Securities, pursuant to NYSE Arca Equities Rule 5.2(j)(6), is that the term of the issue must be a minimum term of one year but not greater than ten years. Proposed NYSE Arca Equities Rule 5.2(j)(6)(b) would extend the duration of the term of the issue from ten years to thirty years.

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.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that Exchange rules be 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. Amending NYSE Arca Equities Rule 5.2(j)(6) should provide the Exchange with more flexibility in responding to the increased demand from issuers to list and trade Index-Linked Securities that are greater than ten years in duration. The Commission notes that corporate bonds and other fixed-income products historically have been issued with terms of up to, or greater than, thirty years.[8] In addition, the Commission has approved amendments to the generic listing standards for equity-linked notes that removed the maximum term limits for those securities.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEArca–2006–70) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21164 Filed 12–12–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54880; File No. SR–OCC–2006–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to an Escrow Program Fee To Be Charged to Escrow Banks

December 6, 2006.

On July 12, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 13, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will amend OCC's Schedule of Fees by adding a $200 escrow fee to be charged to OCC-approved banks.

As background, OCC's escrow deposit program allows a custodian bank that has entered into an escrow agreement with OCC (''escrow bank'') to make deposits of eligible collateral on behalf of its customers with respect to stock option contracts and index option contracts carried in short positions and to rollover and withdraw such deposits by submitting electronic instructions to OCC through OCC's escrow deposit system.[3] Escrow deposits are pledged to the customer's clearing member in order to satisfy the customer's obligation to deposit customer level margin at the clearing member and are pledged to OCC in order to satisfy the clearing member's obligation to deposit clearing level margin at OCC with respect to a specified short position in stock or index options.[4] Under OCC's form of escrow agreement, an escrow bank is obligated to hold the deposited collateral subject to the lien of OCC and the clearing member until such liens are released.

In 2005, the escrow deposit system was integrated into OCC's clearing

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 5.2(j)(6) provides for the listing and trading of Index-Linked Securities pursuant to Rule 19b–4(e) under the Act (the ''generic listing standards'').

[4] *See* Securities Exchange Act Release No. 54636 (October 20, 2006), 71 FR 63060.

[5] The Exchange may submit a proposed rule change pursuant to Section 19(b)(2) of the Act to allow the listing and trading of Index-Linked Securities that do not otherwise meet the generic listing criteria set forth in NYSE Arca Equities Rule 5.2(j)(6).

[6] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See also* NYSE Arca Equities Rule 5.2(e) setting forth the standards for listing debt securities.

[9] *See* Securities Exchange Act Release No. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (SR–Amex–99–33); 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999) (SR–NYSE–99–22); 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (SR–CHX–99–19).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54572 (Oct. 4, 2006), 71 FR 50599.

[3] Escrow banks also use the escrow deposit system to receive and review OCC and relevant clearing member responses and to access reports.

[4] Escrow deposits may include: (i) The underlying securities for any stock option contract; (ii) cash, short-term U.S. Government securities, and/or common stocks for any index call option contract; and (iii) cash and/or short-term U.S Government securities for stock or index put options.