Securities Industry Association
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The Bond Market Association
360 Madison Avenue
New York, NY 10017

March 27, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
Station Place
100 F Street, N.E.
Washington, DC 20549-9303

Re: File No. SR-NYSE-2005-77, Amendment Nos. 6 and 8 Relating to the New York Stock Exchange's Business Combination with Archipelago Holdings, Inc.

Dear Ms. Morris:

The Securities Industry Association[1] ("SIA") and the Bond Market Association[2] ("TBMA and, collectively, the "Associations") appreciate this opportunity to comment on these amendments to the proposed rules and by-law amendments ("Proposal") of the New York Stock Exchange ("NYSE"). We have previously commented extensively on the NYSE's proposed ruled changes in connection with its combination with

[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

[2] TBMA is a trade association that represents approximately 200 securities firms, banks and asset managers that underwrite, trade and invest in fixed-income securities in the United States and in international markets. Fixed income securities include U.S. government and federal agency securities, municipal bonds, corporate bonds, mortgage-backed and asset-backed securities, money market instruments and funding instruments such as repurchase agreements. More information about TBMA and its members and activities is available on its website www.bondmarkets.com.

Archipelago.[3] While Amendment No. 6 had not been formally put out for comment at that time, the amendment was available on the NYSE's web site, and our prior comment letter included discussion of that amendment.

In light of the fact that the Commission has already approved the NYSE's proposed rule changes, and it is neither wise nor practical to reopen that decision, we will limit our comments to issues that can be addressed going forward. We emphasize that in no way do any of our past or present comments suggest that we oppose the consolidation of the NYSE with Archipelago Holdings, Inc. ("Archipelago"). What we would like to highlight are two flaws that can be fixed without having to challenge or reopen any aspect of the NYSE-Archipelago merger. One of these flaws is manifested in Amendment 6, and the other in the SEC's analysis in its approval order.

Regulatory Consolidation vs. "Harmonization." Amendment 6 includes a paragraph in the "Purpose" section to the effect that NYSE LLC, the entity that will hold the exchange license, will continue to work with the NASD to address inconsistent rules and duplicative examinations, and "to use its best efforts, in cooperation with the NASD, to submit to the Commission within one year proposed rule changes reconciling inconsistent rules and a report setting forth those rules that have not been reconciled."[4] This statement, while welcome, falls far short of a satisfactory long-term solution.

First, the goal of complete harmonization will always elude achievement, since it will continually require senior-level effort to reconcile new discrepancies as they arise. Second, harmonization does not resolve the concern about conflicts when a for-profit exchange has regulatory power over its competitors. Third, no matter how capable the regulators or how valiant their efforts to reconcile their rules, in light of the variations in institutional culture, history and constituency among the NYSE and NASD, just synthesizing their rules will be inferior to what could be produced by a single regulator.

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[3] Letter to Nancy M. Morris, Secretary, Securities and Exchange Commission, from Marc E. Lackritz and Micah S. Green, Feb.2, 2006, *available at* http://www.sia.com/comment_letters/10056.pdf.

[4] Amendment No. 6 to SR-NYSE-2005-77, available at http://www.sec.gov/rules/sro/nyse/34-53382amend6.pdf.

Fourth, even if the rules are successfully harmonized, two different enforcement and examination staffs will still tend to interpret and apply the seemingly identical rules differently.

Rather than trying to pick and choose between existing SRO rules, or splitting the difference between two separate rules addressing the same conduct, investors, issuers, and the industry would benefit greatly from the more "prudential" regulatory approach followed by other financial service regulators. A rulebook that is principles-based where appropriate, rather than highly proscriptive and inflexible, will benefit investors and the U.S. capital markets alike. Such an approach should abjure the temptation to use examination and enforcement programs to set unwritten principles that the rules fail to articulate. While proscriptive rules may continue to be appropriate in some situations, an overall regulatory philosophy that is principles-based will foster an atmosphere in which broker-dealers will be more likely to take the initiative and approach regulators with issues they have self-identified in order to seek a rational solution, rather than simply self-police for compliance with highly technical, and possibly outdated, rules. The flexibility embodied in principles-based rules would help ensure the future competitive global leadership of our financial services industry. In the interest that investors and market participants share in efficient and effective regulation, we think that the Commission should encourage the NYSE and the NASD to join together along that path.

Remediating the NYSE's Ongoing Conflict of Interest. The Commission's approval order, after summarizing the concerns raised by SIA, TBMA and a number of other commenters about the lack of sufficient separation between the NYSE's for-profit business interests and its regulatory power, dismissed these concerns, stating that "[t]o the extent that a well-regulated market is considered by an SRO's owners to be in their commercial interests, [becoming for-profit] could better align the goals of SRO owners with their statutory obligations."[5]

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[5] Rel. No. 34-53382, SR-NYSE-2005-77, (Feb. 27, 2006), at 51, *available at* http://www.sec.gov/rules/sro/nyse/34-53382.pdf.

This conclusion, which comes unsupported by any evidence or analysis, seems at odds with many prior SEC statements expressing concern about conflicts between SROs' business interests and regulatory responsibilities. Even if it is true that the NYSE will have incentives to regulate its markets effectively, it is questionable that it will have the same incentives to regulate its competitors fairly or objectively. We respectfully submit that the Commission's dismissal of this issue also entirely begs the question of what sort of regulatory separation is needed when an affiliate of a for-profit entity regulates its competitors. It is particularly troubling that the SEC sidestepped the question of why the NYSE should have directors of the for-profit parent sit on the boards of the regulatory affiliates (comprising a majority of the principal affiliate, NYSE LLC), while the competitors that it regulates have no direct representation at all on any of these boards.

Fortunately, the Commission can still do much to salvage this situation, by pushing the NYSE and NASD to come together to merge their duplicative broker-dealer regulatory functions, as both have stated that they want to do.[6] Unfortunately, the NYSE and NASD seem to be at an impasse on turning their shared views into reality. From recent public statements, the NYSE appears to favor a true "joint venture," controlled by both the NYSE and the NASD, to regulate the firms that are currently dually regulated, while the NASD seems to seek to move the NYSE regulatory functions into itself, or possibly to create an entirely new regulatory entity totally separate from either existing SRO.

We strongly urge the Commission to take the lead in capitalizing on the opportunities created by these developments. The differences between the NYSE and NASD are much less significant than their agreement with the principle that consolidation should occur, and as long as the SEC stays engaged, these differences should be bridged in short order. With the help of the Commission, such a "hybrid regulator" could be the vehicle for driving self-regulation into the 21st century.

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[6] For example, senior NYSE officials in recent public statements have suggested they are "open to the idea of a 'joint venture' with the NASD."*NYSE Seeks a Regulatory Alliance*, Wall Street Journal, C-3 (Feb. 23, 2006). *Big Board and NASD Consider Merging Parts of Regulatory Units*, Wall Street Journal, C3 (November 11, 2005). Senior NASD officials have also signaled receptivity to a hybrid SRO. *See* New *Theorem for Merging Regulators: 1>2*, Wall Street Journal, C3 (November 14, 2005).

The Associations appreciate the opportunity to comment, and we look forward to working with the Commission, the Exchange, and other market participants on resolving these vitally important underlying public policy issues. If you have any questions concerning these comments, or would like to discuss these issues further, please contact George Kramer of SIA at gkramer@sia.com or 202-216-2047, or Marjorie Gross of TBMA, at mgross@bondmarkets.com, or 646-637-9204.

Sincerely,

/s/ G. Kramer

Marc E. Lackritz
President
Securities Industry Association

/s/ G. Kramer

Micah S. Green
President and CEO
The Bond Market Association

Cc:

Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth
Robert L.D. Colby, Acting Director, Division of Market Regulation
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