

ARCHIPELAGO HOLDINGS INC  
Form 425  
January 04, 2006

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

**FORM 8-K/A**

**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15 (d) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**December 30, 2005**

Date of report (Date of earliest event reported)

**Archipelago Holdings, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**001-32274**  
(Commission File Number)

**86-1075595**  
(I.R.S. Employer  
Identification No.)

**100 South Wacker Drive, Suite 1800, Chicago, IL 60606**

(Address of Principal Executive Offices)

**(312) 960-1696**

(Registrant's telephone number, including area code)

**Not applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☑ Written Communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01**      **ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT**

This Amendment No. 1 to the Current Report on Form 8-K filed on December 30, 2005 by Archipelago Holdings, Inc., a Delaware Corporation, is being filed solely to correct a typographical error in the number of options vesting for Mathew Gelber as reported under Item 1.01 from 44,037 to 0. The Current Report on Form 8-K filed on December 30, 2005 is hereby incorporated into this Amendment No. 1.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 3, 2006

**Archipelago Holdings, Inc.**

/s/ Nelson Chai  
Chief Financial Officer

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(2) If a quorum under the immediately preceding subparagraph is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(A) by the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in said first two paragraphs has been met by such person, or

(B) by the shareholders upon a finding that the person has met the applicable standard of conduct set forth in said first two paragraphs.

Notwithstanding any other provision hereof, no amendment or repeal of this Section 7.01, or any other corporate action or agreement which prohibits or otherwise limits, reduces or eliminates the right of any person under this Section 7.01, including the right to indemnification or advancement or reimbursement of reasonable expenses hereunder, nor a decision by the board of directors that an individual designated an Elected Officer shall no longer be an Elected Officer shall be effective as to any person until the 60th day following notice to such person of such action, and no such amendment or repeal or other corporate action or agreement shall deprive any person of any right hereunder arising out of or with respect to any alleged or actual act or omission occurring prior to such 60th day.

The corporation is hereby authorized, but shall not be required, to enter into agreements with any of its directors, officers or employees providing for rights to indemnification and advancement and reimbursement of reasonable expenses, including attorneys' fees, to the extent permitted by law, but the corporation's failure to do so shall not in any manner affect or limit the rights provided for by this Section 7.01 or otherwise.

For purposes of this Section 7.01, the term "the corporation" shall include any legal successor to the corporation, including any corporation which acquires all or substantially all of the assets of the corporation in one or more transactions, and the term "Other Entity" shall mean a corporation (other than the corporation) of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise. For purposes of this Section 7.01, the corporation shall be deemed to have requested a person to serve an employee benefit plan where

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performance by such person of his or her duties to the corporation or any subsidiary thereof also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to any employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

**Section 7.02 Non-Exclusivity.** The rights granted pursuant to or provided by the provisions of Section 7.01 to any person shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which any such person may otherwise be entitled by law, contract or otherwise.

The Company has purchased liability insurance for its officers and directors as permitted by Section 726 of the NYBCL.

**Item 16. Exhibits.**

| <b>Exhibit</b> | <b>Description</b>   |
|----------------|--|
| 1              | Form of Underwriting Agreement   |
| 3 .1           | Restated Certificate of Incorporation of Pall Corporation (as amended through November 23, 1993) (incorporated by reference to Exhibit 3.1 of our 1994 Form 10-K, filed on October 21, 1994) |
| 3 .2           | By-Laws of Pall Corporation (as amended through April 23, 2010) (incorporated by reference to Exhibit 3(ii) of our Form 8-K, filed on April 29, 2010)  |
| 4 .1           | Indenture, dated as June 15, 2010 between Pall Corporation and The Bank of New York Mellon, as Trustee   |
| 4 .2           | Form of Debt Security (included in Exhibit 4.1 hereto)   |
| 5              | Opinion of Cleary Gottlieb Steen & Hamilton LLP  |
| 12             | Statement of Computation of Ratio of Earnings to Fixed Charges   |
| 23 .1          | Consent of KPMG LLP  |
| 23 .2          | Consent of Cleary Gottlieb Steen & Hamilton LLP (included in the opinion filed as Exhibit 5 hereto)  |
| 24             | Power of Attorney (included in the signature page of this registration statement)  |
| 25             | Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939   |

Filed herewith.

**Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth



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in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*provided, however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the



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registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual reports pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

**Table of Contents****SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Port Washington, State of New York, on June 15, 2010.

**PALL CORPORATION**

By: /s/ ERIC KRASNOFF

Eric Krasnoff  
Chairman and Chief Executive Officer

**POWER OF ATTORNEY**

We, the undersigned officers and directors of Pall Corporation, hereby severally and individually constitute and appoint Eric Krasnoff, Lisa McDermott, Sandra Marino and Frank Moschella, and each of them, the true and lawful attorneys-in-fact and agents of each of us to execute in the name, place and stead of each of us (individually and in any capacity stated below) (i) any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents or instruments necessary or advisable in connection therewith, and (ii) a registration statement, and any and all amendments thereto, relating to the offering covered hereby filed pursuant to Rule 462(b) under the Securities Act of 1933, with the Securities and Exchange Commission, each of said attorneys-in-fact and agents to have the power to act with or without the others and to have full power and authority to do and perform in the name and on behalf of each of the undersigned every act whatsoever necessary or advisable to be done in and about the premises, as fully to all intents and purposes as any of the undersigned might or could do in person, and we hereby ratify and confirm our signatures as they may be signed by our said attorneys-in-fact and agents or each of them to any and all such amendments and instruments.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| <b>Signature</b>                           | <b>Title</b>  | <b>Date</b>   |
|--|---|---------------|
| /s/ ERIC KRASNOFF<br>Eric Krasnoff         | Chairman of the Board and Chief Executive Officer (Principal Executive Officer) | June 15, 2010 |
| /s/ LISA MCDERMOTT<br>Lisa McDermott       | Chief Financial Officer and Treasurer (Principal Financial Officer)             | June 15, 2010 |
| /s/ FRANCIS MOSCHELLA<br>Francis Moschella | Vice President Corporate Controller (Principal Accounting Officer)              | June 15, 2010 |
| /s/ AMY ALVING                             | Director  | June 15, 2010 |

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| <b>Signature</b>                                     | <b>Title</b> | <b>Date</b>   |
|--|--------------|---------------|
| /s/ DANIEL J. CARROLL, JR.<br>Daniel J. Carroll, Jr. | Director     | June 15, 2010 |
| /s/ ROBERT B. COUTTS<br>Robert B. Coutts             | Director     | June 15, 2010 |
| /s/ CHERYL W. GRISE<br>Cheryl W. Grisé               | Director     | June 15, 2010 |
| /s/ ULRIC S. HAYNES, JR.<br>Ulric S. Haynes, Jr.     | Director     | June 15, 2010 |
| /s/ RONALD HOFFMAN<br>Ronald Hoffman                 | Director     | June 15, 2010 |
| /s/ DENNIS N. LONGSTREET<br>Dennis N. Longstreet     | Director     | June 15, 2010 |
| /s/ EDWIN W. MARTIN, JR.<br>Edwin W. Martin, Jr.     | Director     | June 15, 2010 |
| /s/ KATHARINE L. PLOURDE<br>Katharine L. Plourde     | Director     | June 15, 2010 |
| /s/ EDWARD L. SNYDER<br>Edward L. Snyder             | Director     | June 15, 2010 |
| /s/ EDWARD TRAVAGLIANTI<br>Edward Travaglianti       | Director     | June 15, 2010 |

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**EXHIBIT INDEX**

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