

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

The foregoing proposed rule change, as amended, is subject to section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and rule 19b-4(f)(6) thereunder<sup>12</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq has fulfilled the five-day pre-filing requirement. Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately allow Nasdaq to integrate its Brut and INET execution systems. For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of such 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.<sup>14</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For the 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).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 22, 2006, the date on which the Exchange submitted Amendment No. 1.

### 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-NASD-2006-126 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-NASD-2006-126. 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 the filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2006-126 and should be submitted on or before January 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E6-21340 Filed 12-14-06; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54910; File No. SR-NYSE-2006-93]

### Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change To Amend NYSE Rule 607 Concerning the Use of the Random Selection Method To Appoint Arbitrators in Matters Not Involving Customers

December 11, 2006.

#### I. Introduction

On October 24, 2006, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend Rule 607 relating to use of the Random Selection Method to appoint arbitrators in matters not involving customers. The proposed rule change was published for comment in the **Federal Register** on November 9, 2006,<sup>3</sup> and the Commission received one comment letter on the proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

Under the Random List Selection methodology, the Director of Arbitration sends parties a randomly generated list of five public arbitrators for claims heard by a single arbitrator. If the claim is heard by three arbitrators, the Director of Arbitration provides parties a randomly generated list of 10 public arbitrators and another list of five securities industry arbitrators. Each party is then allocated strikes against these arbitrators.<sup>5</sup> Currently, customers or non-members may request in writing a Random List Selection within 45 days after they file a statement of claim. The parties also may agree to this methodology provided that they notify the NYSE within this timeframe.<sup>6</sup> If parties do not request a Random List Selection, the Director of Arbitration will select the arbitrator(s) and name a chairman of each panel.<sup>7</sup> NYSE Rule

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

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

<sup>3</sup> See Exchange Act Release No. 54694 (Nov. 2, 2005), 71 FR 65869 (Nov. 9, 2006).

<sup>4</sup> See letter from A. Daniel Woska, Esq., A. Daniel Woska & Associates, PC, dated Nov. 14, 2006 ("Woska").

<sup>5</sup> NYSE Rule 607(c)(2)(i).

<sup>6</sup> NYSE Rule 607(c).

<sup>7</sup> NYSE Rule 607(b).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

607(c) also permits the NYSE to accommodate reasonable alternatives to select arbitrators, provided that all parties agree on the methodology.

Under the proposed amendments to NYSE Rule 607(c), the Random List Selection methodology could be used in all arbitration matters not involving customers if the claimant requests that methodology in writing within 45 days after filing its statement of claim. The proposed amendments would not change the ability of a customer to request the Random Selection Method. The purpose of these amendments is to allow non-member or member claimants to use the Random List Selection method and to ensure that their choice of methodology for arbitrator appointment would prevail.

### III. Summary of Comment

The Commission received one comment on the proposal.<sup>8</sup> The commenter believed that the proposed rule change would do little until the NYSE addressed the “quality of arbitrators” and the requirement that a securities industry arbitrator serve on arbitration panels. The commenter also questioned the constitutionality of the NYSE arbitration system.<sup>9</sup> While the Commission appreciates these comments, we believe they are outside the scope of this rule filing.

### IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the NYSE’s rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>10</sup> The Commission believes that the proposed rule change should help to ensure that members, member organizations, and non-members who choose to file their arbitration claims with the NYSE are treated fairly and equitably by expanding the availability of the Random Selection Method.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>11</sup> that the proposed rule change (SR-NYSE-2006-93), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E6-21339 Filed 12-14-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54904; File No. SR-NYSE-2005-09]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Rule 409 Regarding Statements of Accounts to Customers and Proposed New Rule 409A Regarding SIPC Disclosure

December 8, 2006.

#### I. Introduction

On January 14, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 409, which relates to customer account statements, and to adopt new Rule 409A, which relates to providing customers with information about the Securities Investor Protection Corporation (“SIPC”). On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 2, 2006.<sup>5</sup> The Commission received no comments in response to the Notice. This order approves the proposed rule change, as amended.

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

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

<sup>3</sup> In Amendment No. 1, NYSE withdrew its proposal to amend NYSE Rule 409(a), which would have permitted institutional customers conducting a Delivery versus Payment and Receive versus Payment (“DVP/RVP”) business to opt out of receiving customer account statements. NYSE refiled this proposal in File No. SR-NYSE-2005-90.

<sup>4</sup> In Amendment No. 2, NYSE proposed additional changes to NYSE Rule 409(a) and proposed new NYSE Rule 409A, which are discussed below.

<sup>5</sup> Exchange Act Release No. 54491 (Sept. 22, 2005), 71 FR 58032 (Oct. 2, 2006) (“Notice”).

## II. Description of the Proposal and Comment Summary

In May 2001, the U.S. General Accounting Office (“GAO”) <sup>6</sup> issued a report in which the GAO made recommendations to the SEC and SIPC about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act (“SIPA”).<sup>7</sup> Among other things, the GAO recommended that self-regulatory organizations (“SROs”) explore ways to encourage broader dissemination of the SIPC Brochure to customers so that they can become more aware of the scope of coverage of the SIPA, and that SROs consider requiring firms to include information on periodic statements or trade confirmations advising investors that they should document account discrepancies in writing.<sup>8</sup> Written documentation is important because, in the event a firm goes into liquidation, SIPC and the trustee generally will assume that the firm’s records are accurate unless the customer can prove otherwise.<sup>9</sup>

Consistent with GAO’s recommendations, the NYSE is proposing to amend NYSE Rule 409(e) to require that each statement of account sent to a customer include a legend advising the customer to promptly report any inaccuracy or discrepancy in that person’s account to his or her brokerage firm. If the account is subject to a clearing agreement pursuant to NYSE Rule 382, amended NYSE Rule 409(e) would require the legend to advise that the customer’s notification

<sup>6</sup> The GAO has since been renamed the Government Accountability Office.

<sup>7</sup> GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors*, GAO-01-653 (May 25, 2001). In July 2003, the GAO noted that the Commission was working with SROs to explore ways in which the GAO’s recommendations could be implemented. See GAO, *Securities Investor Protection: Update on Matters Related to the Securities Investor Protection Corporation*, GAO-03-811 (July 11, 2003).

<sup>8</sup> In response to these recommendations, NASD has amended its Rule 2340 to require that account statements include a statement advising each customer to report promptly any inaccuracy or discrepancy in that person’s account to his or her brokerage firm and clearing firm (where these are different firms). Such statement also must advise the customer that any oral communication should be re-confirmed in writing to further protect the customer’s rights, including rights under SIPA. See Exchange Act Release No. 54411 (Sept. 7, 2006) 71 FR 54105 (Sept. 13, 2006) (SR-NASD-2004-171), as corrected by Exchange Act Release No. 54411A (Oct. 6, 2006) 71 FR 61115 (Oct. 17, 2006).

<sup>9</sup> SIPC advises investors who discover an error in a confirmation or statement to immediately bring the error to the attention of their brokerage firm in writing and to keep a copy of any such writing. See SIPC, “Documenting Unauthorized Trading” (available at <http://www.sipc.org/how/unauthorized.cfm>); SIPC, “How SIPC Protects You” (available at <http://www.sipc.org/how/brochure.cfm>).

<sup>8</sup> Woska.

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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