

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54694; File No. SR-NYSE-2006-93)

November 2, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Rule 607 Concerning the Use of the Random Selection Method to Appoint Arbitrators in Matters Not Involving Customers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 24, 2006, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 is proposing to amend Rule 607(c) to provide that in all arbitration matters not involving customers, claimants may use the “Random List Selection” method for arbitrator appointment. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**Rule 607. Appointment of Arbitrators**

(c) Party Requests for [Agreement on Arbitrator Selection] Random List Selection

---

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

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

If the customer [or non-member] requests in writing within 45 days from the time the statement of claim is filed, [or, if all parties agree and so notify the Exchange within that time frame,] arbitrators will be selected according to Random List Selection, as described below. In all arbitration matters not involving customers, if the claimant requests in writing within 45 days from the time the statement of claim is filed, arbitrators will be selected according to Random List Selection, as described below. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree.

\* \* \* \* \*

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

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>3</sup> Currently, customers or non-members

---

<sup>3</sup> NYSE Rule 607(c)(2)(i).

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>4</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>5</sup> NYSE Rule 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.

## 2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5)<sup>6</sup> of the Act requiring exchanges to have rules designed to promote just and equitable principles of trade, and to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE 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.

---

<sup>4</sup> NYSE Rule 607(c).

<sup>5</sup> NYSE Rule 607(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-93 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-2006-93. 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 NYSE. 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-NYSE-2006-93 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris  
Secretary

---

<sup>7</sup> 17 CFR 200.30-3(a)(12).