

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53826; File No. SR-NYSE-2005-90)

May 18, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Allow Certain Institutional Customers to Elect Not to Receive Account Statements

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on December 21, 2005, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed change to NYSE Rule 409 (Statements of Accounts to Customers) as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 28, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.⁴ 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

The Exchange is proposing to amend NYSE Rule 409 to allow institutional customers conducting a Delivery versus Payment and Receive versus Payment (“DVP/RVP”) business to elect not to receive account statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a et seq.

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, a partial amendment, the NYSE proposed additional changes to the text of proposed amended Rule 409, which are incorporated in the proposed rule text below.

The text of the proposed rule change is set forth below. Underlining indicates new text that would be added to the current text of NYSE Rule 409.

Rule 409.

Statements of Accounts to Customers

(a) Except with the permission of the Exchange, or as otherwise provided by this paragraph, member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. Quarterly statements need not be sent to a customer pursuant to Rule 409(a) if:

- 1) the customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);
- 2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387;
- 3) the account does not show security or money positions at the end of the quarter;
- 4) the customer consents to the suspension of such statements in writing. Such consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Securities Exchange Act of 1934;
- 5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and
- 6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

(b) through (g) – No change.

Supplementary Material – No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filing the proposed rule change and Amendment No. 1 with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Waiving of Customer Statements for Institutional DVP/RVP Accounts

NYSE Rule 409, in pertinent part, specifies the obligations of member organizations with respect to customer statements, including frequency of delivery and elements of content.

NYSE Rule 409(a) requires that, except with the permission of the Exchange, members and member organizations shall send statements at least quarterly to customers

for accounts showing security and money positions and entries during the preceding quarter. The Exchange proposes amendments to the Rule that would provide relief from this requirement for customer accounts that are carried solely for the purpose of DVP/RVP transactions. A DVP/RVP account is an arrangement whereby delivery of securities sold is made to the buying customer's bank in exchange for payment, usually in cash, at settlement. Such accounts must comply with the requirements outlined in NYSE Rule 387 (COD Orders).⁵

Due to the nature of DVP/RVP accounts, their statements do not generally reflect any cash balance or security position at the end of a quarter. Consequently, DVP/RVP customers (chiefly institutional customers) generally rely on confirmations (issued pursuant to SEC Rule 10b-10) or trade runs for transaction-related information. Such records provide critical transactional information (such as security name and price, commission or markup, trade date, settlement date, etc.) in a timely fashion (trade date +1). According to the NYSE, such records are preferred by institutional investors, who have no desire to receive voluminous quarterly statements.

Accordingly, the Exchange proposes amendments to Rule 409 that would relieve member organizations of the obligation to send quarterly statements to customers with such accounts if: (1) the customer's account is carried solely for the purpose of execution

⁵ NYSE Rule 387 sets out specific prerequisites for the acceptance of such orders:

- (1) The member or member organization must have previously received the name and address of the agent, together with its customer number;
- (2) The order must note the payment on delivery or collect on delivery nature of the trade;
- (3) The member or member organization must deliver to the customer a confirmation in the specified form; and
- (4) The member organization must have obtained an agreement from the customer regarding the furnishing of appropriate instructions for the settlement of the trade.

on a DVP/RVP basis; (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387; (3) the account does not show security or money positions at the end of the quarter; (4) the customer consents to the suspension of such statements in writing and such consents are maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Exchange Act; (5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in the proposed amended rule would be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements. For purposes of the proposed amended rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

By requiring affirmative consent, the ability of the customer to receive quarterly statements is preserved, and the member organization is precluded from unilaterally terminating delivery of such statements. The customer would also retain the right to reinstate the delivery of statements at any time, and to resume receipt of statements promptly upon request.

In sum, the Exchange believes that the proposed amended rule would provide reasonable regulatory flexibility by allowing customers to decline delivery of statements that are of little or no use to them. Correspondingly, the proposed amended rule would

result in substantial cost savings to member organizations in that they would no longer be required to produce and deliver unwanted and unnecessary records.⁶

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Exchange Act.⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, perfect the mechanism of a free an open market, and protect investors by permitting DVP/RVP customers to avoid receiving unwanted, voluminous quarterly account statements.

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

The Exchange believes that the proposed rule change would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

⁶ In correspondence dated October 26, 2004, and May 22, 2003, that the NYSE received from Mr. Lawrence Morillo, Chairman of the Securities Industry Association STP Legal and Regulatory Subcommittee, it was estimated that it would not be unreasonable to expect a firm to realize savings of \$100,000 per year in statement production and mailing costs.

⁷ 15 U.S.C. 78f(b)(5).

The Exchange 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 such 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, as amended, is consistent with the Exchange 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 an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2005-90 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-2005-90. 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 Section, 100 F Street, NE, Washington, DC 20549. 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-2005-90 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.⁸

Nancy M. Morris
Secretary

⁸ 17 CFR 200.30-3(a)(12).