

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54904; File No. SR-NYSE-2005-09)

December 8, 2006

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

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)<sup>1</sup> 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

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<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.

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.

## 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

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

<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).

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 be sent to both the introducing firm and the clearing firm. The legend also would need to advise the customer that he or she should re-confirm any oral communications with either the clearing or introducing firm in writing to further protect the customer's rights, including rights under the SIPA. The Exchange also is proposing to adopt a new rule, NYSE Rule 409A, which would require member organizations to advise each customer in writing, upon the opening of an account and at least annually thereafter, that he or she may obtain information from SIPC.<sup>10</sup> Proposed Rule 409A would require the written advisories to include SIPC's Web site address and telephone number, and, if the account is subject to a clearing agreement pursuant to NYSE Rule 382, the rule would permit its requirements to be delegated to either the introducing firm or the clearing firm.

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<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>10</sup> NASD also is proposing to adopt new NASD Rule 2342, which would require NASD members to advise new customers in writing at the opening of an account, and advise all customers in writing at least once each year, that they may obtain information about SIPC, including the SIPC Brochure, by contacting SIPC, and to provide customers with SIPC's telephone number and Web site address at those times. See File No. SR-NASD-2006-124.

NYSE initially proposed an effective date of 180 days after SEC approval of the proposed amendments to Rule 409(e) and proposed new Rule 409A. However, to coordinate the effective date of these rule changes with the effective dates proposed for related rule changes proposed by NASD,<sup>11</sup> NYSE has changed the proposed effective date to May 31, 2007.<sup>12</sup>

### III. Discussion and Findings

The Commission finds 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 Sections 6(b)(5) of the Exchange Act.<sup>13</sup> 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 Commission believes the proposed rule change is consistent with the provision of the Exchange Act noted above because it should help investors understand the scope of coverage of the SIPA, and it should help investors understand procedures for preserving their rights in the event of erroneous or unauthorized transactions in their accounts.

While the Commission believes that the proposal would improve NYSE's current customer account disclosure requirements, we believe that the disclosure would be more

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<sup>11</sup> See File Nos. SR-NASD 2006-128 (proposing May 31, 2007, as new effective date for rule change approved in SR-NASD-2004-171) and SR-NASD-2006-124 (with proposed effective date of May 31, 2007).

<sup>12</sup> Telephone conversation between William Jannace, Director, Rule and Interpretive Standards, NYSE, and Brice Prince, Special Counsel, Division of Market Regulation, Commission, on November 8, 2006.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

beneficial to investors if it required NYSE member organizations to include on account statements both introducing and clearing firm contact information sufficient to allow investors to timely report unauthorized transactions or other account discrepancies to both firms (if the firms are different). We believe such disclosure would be consistent with current Commission guidance on this issue.<sup>14</sup> We also believe that such disclosure would help ensure that a customer's concern is delivered to the most appropriate person at the firm. The Commission therefore encourages NYSE to issue guidance to its member organizations regarding the proposed change to Rule 409 that reminds member firms of their current obligations with respect to customer account statements.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>15</sup> that the

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<sup>14</sup> See Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992) (amending the SEC's net capital rule and explaining the staff's interpretation that to avoid more stringent capital requirements under the rule, an introducing firm must "have in place a clearing agreement with a registered broker-dealer that states, for the purposes of SIPA and the Commission's financial responsibility rules, customers are customers of the clearing, and not the introducing, firm. Furthermore, the clearing firm must issue account statements directly to customers. Each statement must contain the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account."). See also NYSE Interpretation Handbook at 4105 (carrying organization phone number may appear on the back of the customer account statement, but, if so, it must be in "bold" or "highlighted" text).

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

proposed rule change (SR-NASD-2005-09), as amended, be, and hereby is, approved,<sup>16</sup>  
effective May 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated  
authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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