

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54910; File No. SR-NYSE-2006-93)

December 11, 2006

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

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”)¹ and Rule 19b-4 thereunder,² 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, 2006,³ and the Commission received one comment letter on the proposal.⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ See letter from A. Daniel Woska, Esq., A. Daniel Woska & Associates, PC, dated Nov. 14, 2006 (“Woska”).

industry arbitrators. Each party is then allocated strikes against these arbitrators.⁵ 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.⁶ 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.⁷ 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.

III. Summary of Comment

The Commission received one comment on the proposal.⁸ 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

⁵ NYSE Rule 607(c)(2)(i).

⁶ NYSE Rule 607(c).

⁷ NYSE Rule 607(b).

⁸ Woska.

arbitration panels. The commenter also questioned the constitutionality of the NYSE arbitration system.⁹ 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.¹⁰ 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.

⁹ Id.

¹⁰ 15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹¹ 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.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).