general public arbitrator roster. NASD also has stated that to avoid duplication of names on the lists sent to parties, arbitrators who are on the chairperson roster will not be on the general public arbitrator roster. Does limiting arbitrators on the chairperson roster to service only as chairpersons limit the pool of arbitrators available to serve on panels, particularly in regions where relatively few arbitrators are available? Should chairpersons be permitted to serve in a non-chairperson capacity as well?

E. *Proposed Rule 12408, Disclosures of Arbitrators:* This proposed rule would require arbitrators to disclose any existing or past service as a mediator before they are appointed to a panel.[17] Does the proposed rule suggest that arbitrators must disclose only any service as a mediator that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding? Alternatively, do commenters understand from the rule that arbitrators must disclose any existing or past service as a mediator, even it has no connection with the proceeding? Should the rule be revised to reflect more clearly one or the other of these readings? If so, which?

F. *Proposed Rule 12600(c), Required Hearings:* This proposed rule would provide that if a hearing will be held, the Director will notify the parties of the time and place of the hearing at least 10 days before the hearing begins, unless the parties agree to a shorter time. Do parties need notice of the hearing earlier than 10 days before the hearing, or is 10 days sufficient?

G. *Proposed Rule 12702, Withdrawal of Claims:* This proposed rule provides that before a claim has been answered by a party, the claimant may withdraw the claim against the party with or without prejudice. After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless the panel decides, or the claimant and that party agree, otherwise. Does the proposed rule appropriately address the concern of allowing claimants to withdraw claims without prejudice, while protecting the respondent from expending significant resources to respond to a claim (that is later withdrawn) or having to respond to the same claim multiple times? How prevalent are the problems of respondents (1) expending significant resources to respond to a claim that is later withdrawn, or (2) having to respond to the same claim multiple times? Are there other ways to address these competing concerns? Would the proposed rule unnecessarily deter claimants from filing claims? Would the proposed rule encourage respondents to increase the amount in controversy in the arbitration, and therefore the fees that the parties may have to bear? Should the proposed rule exclude arbitrations involving $25,000 or less, *i.e.*, those to which Proposed Rule 12800, Simplified Arbitrations, apply?

H. *Proposed Rule 12800, Simplified Arbitrations:* This proposed rule provides that all provisions of the Code apply to simplified arbitrations, unless otherwise provided under proposed rule 12800. This means that the time within which parties must answer a statement of claim in simplified arbitrations is 45 days, as in regular arbitrations. Should this time be shortened for simplified arbitrations, as they are meant to be more expedient than regular arbitrations? If so, what would be an appropriate amount of time? 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–NASD–2003–158 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-NASD–2003–158. The 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 will also be available for inspection and copying at the principal office of 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 SR-NASD–2003–158 and should be submitted on or before July 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3268 Filed 6–22–05; 8:45 am]

BILLING CODE 8010–01–P

[17] This amendment seeks to incorporate IM–10308, relating to arbitrators who also serve as mediators, which was adopted earlier this year. *See* Exchange Act Rel. No. 51325 (Mar. 7, 2005), 70 FR 12522 (Mar. 14, 2005) (Order Approving Proposed Rule Change); Exchange Act Rel. No. 51097 (Jan. 28, 2005), 70 FR 5715 (Feb. 3, 2005) (Notice of Proposed Change).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51863; File No. SR–NYSE–2005–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Relating to Amendments to Exchange Rule 607

June 16, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 4, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared by the NYSE. On May 12, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] On May 13, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (''Amendment No. 2).[5] On June 16, 2005, the NYSE filed Amendment No. 3 to the proposed rule change (Amendment No. 3).[6] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 was filed and withdrawn by the NYSE on May 12, 2005.

[5] *See* Amendment No. 2. Amendment No. 2 supplemented the initial filing.

[6] *See* Amendment No. 3. Amendment No. 3 supplemented the initial filing and modified certain statements in Amendment No. 2.

is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 607 concerning the procedures for the appointment of arbitrators to arbitration cases administered by the NYSE. The text of the proposed rule change is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

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 changes. The text of these statements, as amended, 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

The NYSE currently has several methods by which arbitrators are assigned to cases, including the traditional method pursuant to NYSE Rule 607 where NYSE staff appoints arbitrators to cases.

a. The Pilot Program

On August 1, 2000, the NYSE implemented a two-year pilot program to allow parties, on a voluntary basis, to select arbitrators under three alternative methods (in addition to the traditional method).[7] Upon expiration of the two-year pilot, the NYSE renewed the pilot for an additional two years, ending on July 31, 2004.[8] The pilot was subsequently extended again until January 31, 2005,[9] and further extended until July 31, 2005.[10]

The first alternative under the pilot program is the Random List Selection method, by which the parties are provided randomly-generated (as described below) lists of public- and securities-classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. Under the pilot program, if vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

The second alternative method under the pilot program is the Enhanced List Selection method, in which six public- and three securities-classified arbitrators are selected by NYSE staff, based on their qualifications and expertise. The lists are then sent to the parties. The parties have three strikes to use and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Lastly, the pilot program permits parties, pursuant to mutual agreement, to choose arbitrators through any alternative method.

Under the pilot program, the parties must all agree to use either the Random List Selection method, the Enhanced List Selection method or an ''alternative method.'' Absent such agreement, under the pilot program, the traditional method is used.

b. The Initial Filing

The proposed amendments to Rule 607 in the initial filing, filed on January 4, 2005 (the ''Initial Filing'') retained the traditional method of staff appointment of arbitrators as an option. In addition, the proposed amendments modified and made permanent the Random List Selection method by specifying the number of arbitrators on each list (the pilot did not specify the numbers, but the Initial Filing specified that it would be 10 public arbitrators and five securities arbitrators) and limiting the number of strikes (four against the public arbitrators and two against the securities arbitrators). The proposed amendments in the Initial Filing also eliminated the second list of arbitrators. According to the NYSE, this would simplify and shorten the appointment process. The Initial Filing also specified that for simplified arbitrations, the randomly generated list would contain the names of three arbitrators.[11] Further, the Initial Filing gave the customer or non-member the election of choosing to use Random List Selection as the method to appoint arbitrators. If a claim included a customer and a non-member, the election of the customer controlled, and all parties' agreement to use list selection would no longer be required.

The Initial Filing also retained for the Director of Arbitration the discretion to appoint arbitrators to the panel pursuant to the traditional method of appointment in the event a full panel could not be appointed under Random List Selection. Further, in the Initial Filing, because parties rarely request Enhanced List Selection, or other alternative methods pursuant to mutual agreement, the NYSE proposed to eliminate those options as methods for selecting arbitrators.[12] The Initial Filing also provided that a party could request an arbitrator's last three NYSE arbitration decisions, if any, whereas the pilot program had provided that these decisions would be sent automatically. Lastly, the Initial Filing provided that any request for additional information must be made within the ten business days in which the parties must return the lists, and that this time period is applicable to all requests for additional information under NYSE Rule 607 as well as NYSE Rule 608, which governs notice of selection of arbitrators and provides, among other things, that the Director of Arbitration will provide the parties with the names and employment histories of the arbitrators for the past ten years, and that a party may request additional information concerning an arbitrator's background.

c. The Amended Filing.

In response to Commission staff comments, the NYSE filed Amendment No. 2. Amendment No. 2 increased the number of arbitrators and party strikes for simplified arbitrations, and provided that the NYSE would accommodate any reasonable alternative method of appointing arbitrators, if the parties agree, thereby retaining the provision currently in the pilot program. In Amendment No. 2, the NYSE also provided information regarding the random generation of lists or arbitrators. The computer randomly selects arbitrators for appointment after doing a conflicts check based on both brokerage house accounts and securities affiliations. For simplified arbitrations,

[7] The pilot program was implemented originally for a two-year period. Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–2000–34).

[8] *See* Exchange Act Release No. 46372 (August 16, 2002), 67 FR 54521 (August 22, 2002) (SR–NYSE–2002–30).

[9] *See* Exchange Act Release No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

[10] *See* Exchange Act Release No. 51085 (Jan. 27, 2005), 70 FR 5716 (Feb. 3, 2005), corrected at 70 FR 7143 (Feb. 10, 2005).

[11] 11 This provision was changed in Amendment No. 2, discussed below.

[12] In Amendment No. 2, the NYSE reinserted parties' ability to choose alternate methods pursuant to mutual agreement, although it retained the elimination of Enhanced List selection.

the randomly generated list would contain the names of five arbitrators and each party would have two strikes. If a full panel cannot be appointed from the list(s) of proposed arbitrators, the computer continues to select arbitrators, one at a time, randomly until the panel has been filled by arbitrators able to serve. If a panel cannot be filled by arbitrators able to serve pursuant to Random List Selection, the Director of Arbitration would have the discretion to appoint arbitrators to the panel pursuant to the traditional method of appointment. This discretion would only be exercised if the lists of all arbitrators who have indicated their willingness to serve in a particular location, either at their own expense or at the expense of the NYSE, have been exhausted and no acceptable arbitrators on the lists were able to serve.

d. Comparison to SICA Rules.

The proposed amendments resemble the Uniform Code of Arbitration (''UCA'') developed by the Securities Industry Conference on Arbitration (''SICA'').[13] Aside from word choice and punctuation, the principal differences between the NYSE's proposed rules and the SICA-developed UCA are:

- The NYSE retains the traditional method of staff appointment.
- The NYSE specifies the number of arbitrators on the lists.
- The NYSE limits the number of peremptory challenges.
- The NYSE eliminates a second list containing three names for each vacancy under the Random List Selection method.
- The NYSE does not send the two lists of public and industry arbitrators under the Random List Selection method unless and until the customer or non-member requests in writing the use of the Random List Selection method within 45 days from the date of filing of the statement of claim.
- The NYSE does not set a time period in which the director of arbitration must send lists of potential arbitrators to the parties.
- The NYSE sets a ten business day period for the parties to return the lists to the director of arbitration.
- The NYSE sets a ten business day period for the parties to request additional information about a potential arbitrator.
- The NYSE permits the parties to agree to extend the time period in which to return the lists.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)[14] of the Act in general and Section 6(b)(5) of the Act[15] in particular in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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.

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

The NYSE has not solicited but has 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, as amended, is consistent with the Act. We solicit specific comment on whether the Exchange should automatically send parties a potential arbitrator's prior three arbitration decisions, as provided in the pilot program, or whether it is appropriate for the Exchange only to send such decisions upon a party's request. We also solicit specific comment on whether the Exchange should inform parties that prior arbitration decisions are available on its Web site.

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.* Please include File Number SR–NYSE–2005–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–02. 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–2005–02 and should be submitted on or before July 14, 2005. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[13] The NASD also has a rule that provides for the appointment of arbitrators by list selection. *See* NASD Rule 10308.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).