

organizations to provide their customers with written notification of fees. This proposed new rule is, therefore, consistent with section 6(b)(5) of the Exchange Act because it would provide for greater transparency to customers with respect to fees charged and will provide guidance to firms with respect to the fees they impose upon their customers.

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

The Exchange believes that the proposed rule change does 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 Received from Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule 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, or

B. institute proceedings to determine whether the proposed rule 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 is consistent with the Act. We invite interested persons to discuss whether a de minimis exception to paragraph (1) would help member organizations comply with the proposed rule and/or increase the effectiveness of the disclosures. If a de minimis exception is warranted, we also invite interested persons to discuss under what circumstances a fee or fee increase should be considered "de minimis." 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-013 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-2007-013. 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 that are filed with the Commission, and all written communications relating to the proposed rule 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, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2007-013 and should be submitted on or before August 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E7-14990 Filed 8-1-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56158; File No. SR-NYSE-2005-48]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 to Revise Rule 619 Pertaining to Subpoenas for the Production of Documents and Appearances of Witnesses

July 27, 2007.

#### I. Introduction

On July 13, 2005, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending NYSE Rule 619, which pertains to subpoenas for the production of documents and the appearance of witnesses. On September 26, 2005, the Commission published for comment the proposed rule change in the **Federal Register**.<sup>3</sup> The Commission received no comments on the proposal. On April 18, 2006, November 2, 2006, December 22, 2006, and February 8, 2007, the NYSE submitted Amendment Nos. 1, 2, 3, and 4, respectively, to the proposed rule change.<sup>4</sup> On April 13, 2007, the Commission published for comment the proposed rule change, as amended, in the **Federal Register**.<sup>5</sup> The Commission received two comments on the proposal.<sup>6</sup> On July 13, 2007, NYSE

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52468 (Sept. 19, 2005), 70 FR 56201 (Sept. 26, 2005).

<sup>4</sup> Amendment No. 1 clarified that only the arbitrator(s) may issue subpoenas and delineated the manner in which a party may request the issuance of a subpoena. Amendment No. 2 established a time frame for the parties to make and respond to objections to the requested subpoena and clarified that the arbitrator(s) may not rule on such a request until this time period has elapsed. Amendment No. 3 made technical changes to the rule and clarified that the arbitrator(s) must receive copies of any objections to the issuance of a subpoena. Amendment No. 4 clarified that a party requesting a subpoena may not serve the request or the draft subpoena on a non-party.

<sup>5</sup> See Securities Exchange Act Release No. 55594 (April 6, 2007), 72 FR 18710 (April 13, 2007).

<sup>6</sup> See letters from Steven B. Caruso, President, Public Investors Arbitration Bar Association ("PIABA"), dated April 17, 2007; and Martin L. Feinberg, dated May 4, 2007 ("Feinberg"). The NYSE responded to these comments in telephone conversations with Commission staff. Telephone conversations among Karen Kupersmith, Director of Arbitration, NYSE; Lourdes Gonzalez, Assistant

<sup>9</sup> 17 CFR 200.30-3(a)(12).

submitted Amendment No. 5 to the proposed rule change.

This notice and order solicits comment from interested persons on Amendment No. 5 and approves the proposal, as amended, on an accelerated basis. The text of the proposed rule change is available at <http://www.nyse.com>, the principal offices of the NYSE, and the Commission's Public Reference Room.

## II. Description of the Proposed Rule Change

In its amended filing, the NYSE proposed to revise Rule 619 to provide that only the arbitrator(s) may issue subpoenas for the production of documents and the appearance of witnesses. The rule also provides that the arbitrator(s), and not the courts, will rule on discovery disputes concerning the issuance of subpoenas. Under the rules, the party who requests a subpoena must make a written request asking the arbitrator(s) to issue the subpoena and send a copy of the request and the requested draft subpoena to the Director of Arbitration, each arbitrator, and all parties to the arbitration in a manner reasonably expected to result in delivery to everyone on the same day. The requesting party may not serve the request or the requested draft subpoena on any non-party.

If a party has an objection to the propriety or scope of the subpoena, that party must file objections in writing with the Director of Arbitration and send copies to all other parties, including each arbitrator, within 10 days of service of the request and draft subpoena. The party requesting the subpoena could file a reply to the objection within five days of receipt of the objection. The arbitrator(s) then determine the propriety and scope of the requested subpoena after the time period for filing objections or replies had elapsed. If a subpoena is issued by the arbitrator(s), the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties, and, if applicable, on any non-party receiving the subpoena.

In addition, the proposed rule change provides that any party that receives documents in response to a subpoena served upon a non-party must provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of those documents and, if such a

request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents is responsible for the reasonable costs associated with the production of the copies, unless the panel determines otherwise.

Amendment No. 5 clarified that calendar days, and not business days, apply to (1) The 10-day period to object to the scope or propriety of subpoenas, (2) the five-day period to respond to an objection, (3) the five-day period to notify all other parties of receipt of documents from a third party, and (4) the 10-day period to request copies of these documents.

## III. Summary of Comments Received and NYSE Response

One commenter<sup>7</sup> noted that the proposed rule does not expressly state whether calendar or business days apply to various filing deadlines, and urged the NYSE to clarify in the rule specify that calendar days govern the applicable time periods. In response to this comment, the NYSE filed Amendment No. 5, which clarified that calendar days apply to all deadlines under the proposed rule. Both commenters criticized the proposed rule's requirement that the party receiving documents in response to a subpoena will be responsible for the reasonable costs associated with the production, unless the panel determines otherwise. PIABA stated that this "cost-shifting" will increase arbitration expenses associated with the initiation and prosecution of every arbitration proceeding, while Feinberg maintained that the rule should not require payment for subpoenaed documents.

The NYSE responded that although the proposed rule is ambiguous, this provision only applies to the receipt of documents from a third-party, and does not apply more broadly to all subpoenas, as the commenters suggest. The arbitration panel still may allocate fees among the parties pursuant to NYSE Rule 629(c)(2), which permits arbitrators to determine in the award the amount of costs incurred pursuant to Rule 619 (among other rules) and, unless applicable law directs otherwise, other costs and expenses of the parties.<sup>8</sup>

One commenter<sup>9</sup> contended that under the proposed rule, read in light of the subpoena service requirements of the Federal Arbitration Act, would require personal service of subpoenas and copies of subpoenas. In the commenter's view, this would be

expensive, burdensome and unnecessary. The NYSE responded that neither the proposed rule nor its other rules require personal service.<sup>10</sup> In particular, NYSE stated that Rule 612 provides that "[s]ervice and filing are accomplished on the date of mailing either by first-class postage prepaid or by means of overnight mail service or, in the case of other means of service, on the date of delivery."<sup>11</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 5, including whether Amendment No. 5 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-48 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-2005-48. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted

Chief Counsel—Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (July 11, 2007 and July 27, 2007) ("NYSE Response").

<sup>7</sup> PIABA.

<sup>8</sup> NYSE Response.

<sup>9</sup> Feinberg.

<sup>10</sup> NYSE Response.

<sup>11</sup> *Id.*

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-2005-48 and should be submitted on or before August 23, 2007.

#### V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and, in particular, with section 6(b)(5) of the Act.<sup>12</sup> Section 6(b)(5) requires, among other things, that the NYSE's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>13</sup> The Commission believes that the proposed rule change is designed to accomplish these ends by permitting only arbitrators to issue subpoenas and by making the arbitration subpoena process more orderly and efficient.

#### *Accelerated Approval of Amendment No. 5*

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act. Amendment No. 5 clarifies that calendar days, and not business days, apply to various filing deadlines under the proposed rule. The Commission anticipates that these changes will provide for greater clarity with respect to the subpoena process. Accordingly, the Commission finds that accelerated approval of Amendment No. 5 is appropriate.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>14</sup> that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, (SR-NYSE-2005-48), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-14993 Filed 8-1-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56157; File No. SR-NYSEArca-2007-71]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 6.86

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 26, 2007, NYSE Arca, Inc., ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE Arca. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered the proposal effective upon filing with the Commission. 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 Arca proposes to implement the Exchange's quote mitigation strategy, reflected in NYSE Arca Rule 6.86, on a permanent basis. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and <http://nysearca.com>.

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

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. 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 the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to implement the Exchange's quote mitigation strategy, reflected in NYSE Arca Rule 6.86, on a permanent basis. The Exchange's quote mitigation strategy, which is designed to reduce the number of quotations generated by NYSE Arca for all option issues traded on NYSE Arca, not just issues in the Penny Pilot, was previously approved by the Commission in conjunction with approval of the Penny Pilot.<sup>5</sup> According to that approval order, the Commission approved both the Penny Pilot and the changes to NYSE Arca Rule 6.86 for a six month period, ending July 25, 2007. The quote mitigation strategy reflected in NYSE Arca Rule 6.86 was not intended to be approved on a pilot or short term basis.<sup>6</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange 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

No written comments were either solicited or received by the Exchange.

<sup>5</sup> See Securities Exchange Act Release No. 34-55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR-NYSEArca-2006-73).

<sup>6</sup> The Exchange reported that its quote mitigation strategy has resulted in a daily mitigation savings of, on average, 13% of NYSE Arca's daily quote traffic sent to the Options Price Reporting Authority. See Exhibit 3 to SR-NYSEArca-2007-56, "Understanding Economic and Capacity Impacts of the Penny Pilot" (analyzing data collected during the first three months of the Penny Pilot).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).