

contained in SR-NASD-2006-055 was subsequently amended by SR-NASD-2005-087.<sup>9</sup> In addition, in light of the changes implemented as part of SR-NASD-2005-087, the transactions that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to NASD By-Laws will no longer be reported to the Nasdaq Market Center as originally proposed in NASD Rule 6120(g), but to another NASD facility, either the Trade Reporting Facility or the OTC Reporting Facility, as defined in NASD Rule 6110. As a result, NASD is proposing changes to the rule text approved pursuant to SR-NASD-2006-055 to conform it to the recently approved rule changes as part of SR-NASD-2005-087. In addition, SR-NASD-2006-055 proposed amendments to NASD Rule 4642, which was subsequently deleted in SR-NASD-2005-087, and therefore these rule changes are no longer necessary.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be the implementation date of SR-NASD-2006-055, which is anticipated to be December 1, 2006.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD rules must 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. NASD believes that the proposed rule change will enhance the integrity of the market by increasing the consistency and clarity of its rules.

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

NASD 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*

Written comments were neither solicited nor received.

<sup>9</sup> The amendments to Section 3 of Schedule A to NASD By-Laws and NASD Rules 6420, 6620, and 6130A were unaffected by SR-NASD-2005-087. Accordingly, these amendments will become effective in accordance with SR-NASD-2006-055 and the corresponding *Notice to Members* that will announce the effective date of the amendments, which is anticipated to be December 1, 2006.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposal.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-NASD-2006-098 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-NASD-2006-098. 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

<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), NASD provided the Commission with notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

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 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 File Number SR-NASD-2006-098 and should be submitted on or before September 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-13816 Filed 8-21-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54320; File No. SR-NYSE-2005-18]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto Regarding NYSE Rule 619 To Clarify That Failure To Appear or Produce Documents in Arbitration May Be Deemed Conduct Inconsistent With Just and Equitable Principles of Trade**

August 15, 2006.

## I. Introduction

On February 17, 2005, the New York Stock Exchange, Inc. ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 619 to clarify that it may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6) for a member, member

<sup>12</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.

organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange (each, a "responsible party") to fail to appear or fail to produce any document in its possession or control as directed pursuant to applicable provisions of the NYSE Arbitration Rules. On July 27, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on April 11, 2006.<sup>5</sup> The Commission received five comment letters on the proposal.<sup>6</sup> This order approves the proposed rule change as amended.

## II. Description of the Proposal

NYSE Rule 476 allows disciplinary sanctions to be imposed upon a responsible party who is adjudged guilty of certain enumerated offenses, including "conduct or proceeding inconsistent with just and equitable principles of trade." The proposal would amend Rule 619 to clarify that it may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6) for a responsible party to fail to appear or fail to produce any document in its possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

The Exchange is aware of allegations that member organizations have not fulfilled their discovery obligations as prescribed by NYSE Arbitration Rules. The NYSE believes that the express authority for the NYSE to bring a disciplinary action under NYSE Rule 476(a)(6) will improve the efficacy of the arbitration process by facilitating the Exchange's ability to ensure more fully and forcefully the cooperation of a

responsible party who is a party to an arbitration proceeding. By explicitly providing that the failure to appear or to produce documents in one's possession or control may be deemed conduct or proceeding inconsistent with just and equitable principles of trade, the NYSE believes that the proposed amendment would provide the Exchange with a clear mechanism to pursue disciplinary action pursuant to NYSE Rule 476 in response to such conduct.

## III. Summary of Comments

The Commission received five comment letters on the proposal.<sup>7</sup> Commenters generally supported the proposal.<sup>8</sup> As discussed below, however, some raised concerns with certain aspects of it.

Proposed Rule 619(h) states in relevant part that "[i]t may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of Rule 476(a)(6) [for a responsible party] to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules." (Emphasis added.) One commenter stated that the emphasized language could be misconstrued to require the prior direction or an order of an arbitration panel before the NYSE could charge the party with a violation of Rule 476.<sup>9</sup> The commenter also suggested that the proposed rule be amended to clarify that it does not affect an arbitrator's current authority under Rules 604 (dismissal of proceedings) and 621 (enforcement of rulings).<sup>10</sup>

Two commenters believed that the proposed rule does not adequately address what the commenters' view are ongoing problems with arbitrator conflicts of interest.<sup>11</sup> One of these commenters stated that a securities arbitrator may be reluctant to impose sanctions on a party for fear that the party may not select the arbitrator to

serve on future NYSE arbitration panels.<sup>12</sup>

## IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, 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 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 also finds that the proposal is consistent with Section 6(b)(6)<sup>14</sup> of the Act, which requires, among other things, that the rules of an exchange provide that members and persons associated with its members be appropriately disciplined for violating the Act, the rules or regulations under the Act, or the rules of the exchange.

In particular, the Commission believes that by expressly authorizing the NYSE to bring an action against a member under Rule 476 for failing to appear or to produce any document in its possession or control in an arbitration proceeding, the proposal will enable NYSE to appropriately discipline such members. Moreover, the Commission believes the proposed rule could reduce discovery abuses by alerting parties to the importance of complying with NYSE Rule 619.

One commenter stated that the proposal could be misconstrued to require an order of an arbitration panel before NYSE could charge a party with violating Rule 476.<sup>15</sup> NYSE staff confirms that the proposed rule does not require an arbitration panel to issue an order before the NYSE could bring an action under Rule 476. Indeed, the proposal does not require any action from the arbitration panel before the NYSE may bring such an action. Moreover, the proposal authorizes the NYSE to bring an action under Rule 476 against a party during an arbitration proceeding if the NYSE believes such action is warranted.<sup>16</sup>

<sup>3</sup> In Amendment No. 1, which replaced the original filing, the Exchange clarified that Rule 619 also applies to a "person otherwise subject to the jurisdiction of the Exchange."

<sup>4</sup> Amendment No. 2, which replaced the first amended rule filing, conformed the proposed rule to reflect the list of persons subject to disciplinary action under NYSE Rule 476.

<sup>5</sup> See Exchange Act Release No. 53599 (Apr. 4, 2006), 71 FR 18401 (Apr. 11, 2006).

<sup>6</sup> See E-mail from David Plimpton, Plimpton & Esposito, to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), dated April 27, 2006 ("Plimpton"); letter from Robert S. Banks, Jr., Public Investors Arbitration Bar Association, dated April 25, 2006 ("PIABA"); E-mail from A. Daniel Woska, A. Daniel Woska & Associates, P.C., to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), dated April 23, 2006 ("Woska"); E-mail from Les Greenberg, Law Offices of Les Greenberg, to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), dated April 20, 2006 ("Greenberg"); letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated April 11, 2006 ("Caruso").

<sup>7</sup> See *id.*

<sup>8</sup> For example, one commenter supported the proposed rule because, in the commenter's view, members that violate discovery rules do not regard their conduct as serious unless sanctions are imposed. PIABA. See also Woska.

<sup>9</sup> See Caruso.

<sup>10</sup> *Id.* Two commenters stated that arbitrators need to better enforce existing procedures, particularly Rule 604(b), which allows an arbitrator to impose sanctions against a party that willfully and intentionally fails to comply with an arbitrator's order if lesser sanctions have proven ineffective. Greenberg and PIABA.

<sup>11</sup> See Greenberg (stating that monetary sanctions on attorneys might be a more effective deterrent) and Plimpton (questioning whether NYSE arbitrators are independent enough to take action to curb discovery abuse).

<sup>12</sup> See Greenberg. To address concerns about arbitrator reluctance to sanction a party, the commenter suggested that the proposal require arbitrators to refer all contested discovery orders to NYSE.

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

<sup>14</sup> 15 U.S.C. 78f(b)(6).

<sup>15</sup> Caruso.

<sup>16</sup> Telephone conversation between Karen Kupersmith, Director of Arbitration, NYSE, and Richard Strasser, Attorney Fellow, SEC (Aug. 1, 2006). The commenter also suggested that the proposed rule be amended to clarify that it does not affect the power of an arbitrator to impose sanctions under Rules 604 (dismissal of proceedings) and 621

Some commenters raised broader concerns about arbitrator conflicts of interest and the need for arbitrators to better enforce existing arbitration procedures.<sup>17</sup> The Commission believes these comments are beyond the scope of the current proposal.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>18</sup> that the proposed rule change (SR-NYSE-2005-18), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-13811 Filed 8-21-06; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10567 and # 10568]

### Texas Disaster # TX-00195

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA—1658—DR), dated 08/15/2006.

*Incident:* Flooding.

*Incident Period:* 07/31/2006 and continuing.

*Effective Date:* 08/15/2006.

*Physical Loan Application Deadline Date:* 10/16/2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/15/2007.

**ADDRESSES:** Submit completed loan applications to:

U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/15/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

(enforcement of rulings). In the telephone call referenced above, NYSE staff stated that nothing in the proposal is intended to affect arbitrators' current authority under existing NYSE arbitration rules.

<sup>17</sup> See, e.g., Greenberg and Plimpton.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties* (Physical Damage and Economic Injury Loans): El Paso  
*Contiguous Counties* (Economic Injury Loans Only): Texas Hudspeth, New Mexico, Dona Ana Otero

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	6.250
Homeowners without credit available elsewhere .....	3.125
Businesses with credit available elsewhere .....	7.934
Other (including non-profit organizations) with credit available elsewhere .....	5.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
For Economic Injury:	
Businesses & small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 10567 6 and for economic injury is 10568 0.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E6-13852 Filed 8-21-06; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

### Privacy Act of 1974 as Amended; Computer Matching Program (SSA/ Department of the Treasury, Internal Revenue Service (IRS))—Match 1310

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a new computer matching program, which is expected to begin October 1, 2006.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the IRS.

**DATES:** SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 965-8582 or by writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Income Security Programs as shown above.

## SUPPLEMENTARY INFORMATION:

### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain the Data Integrity Boards' approval of the match agreements;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;
- (5) Notify applicants and beneficiaries that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.