

Finally, IM-2110-2 currently contains provisions that prescribe the minimum level of price-improvement for securities trading in non-decimalized fractions. Given that equities no longer trade in fractions, NASD proposes to delete such fractional references as part of this proposed rule change.

As a result of the proposed changes described above, NASD is proposing to apply limit order protection requirements uniformly to all equity securities by extending the scope of the Manning Rule to OTC equity securities.¹⁹ In doing so, NASD also is proposing to repeal NASD Rule 6541, as those requirements would be subsumed in the proposed expansion of the Manning Rule.

NASD intends to announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, NASD proposed to set the effective date at 90 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ 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 improve treatment of customer limit orders and promote investor protection.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

242.600(b)(46). As such, the term "NMS stock," for purposes of IM-2110-2, would include, among other things, exchange traded funds (ETFs).

¹⁹ In addition to the differences between IM-2110-2 and NASD Rule 6541 described above, the Commission also approved amendments to IM-2110-2 that generally require a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price, to pass along that price improvement to the customer limit order. This requirement currently does not apply under NASD Rule 6541. See Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (File No. SR-NASD-2004-089). See also NASD Notice to Members 05-64 (October 2005).

²⁰ 15 U.S.C. 78o-3(b)(6).

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 by NASD.

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 NASD consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change, as amended, 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.

At the NASD's request, the Commission also is seeking comment on whether 90 days from the publication of NASD's *Notice to Members* provides adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor. 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-2005-146 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-2005-146. 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 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-2005-146 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54692; File No. SR-NSX-2006-12]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Fee Schedule Under Rule 16.1(a) and 16.1(c) for Transactions Executed Through the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2006, the National Stock Exchange, Inc.SM ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NSX. NSX submitted the proposed rule change

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders 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

The Exchange is proposing to implement a Fee Schedule under Rule 16.1(a) and 16.1(c) for transactions executed through the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage ("ITS Plans").⁵ The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the Exchange's Office of the Secretary 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 Exchange 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 parts of such statements.

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

1. Purpose

In anticipation of the approval of the Exchange's new trading rules,⁶ the Exchange amended its rules in July 2006 to add Chapter XVI to its rules to set forth, in their own chapter, rules relating to fees, dues, assessments and the tape rebate program. The rule change, SR-NSX-2006-10, was filed pursuant to Section 19(b)(3)(A) of the

Act, which rendered it effective upon filing.⁷ As part of that filing, Rule 16.1(c) states that the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange. Such notice may be made available to ETP Holders on the Exchange's Web site or by any other method deemed reasonable by the Exchange."

As part of this rule change, the Exchange is filing a Fee Schedule under Rule 16.1(a) and 16.1(c) for transactions executed through the ITS Plans.⁸ The Fee Schedule provides for the ability to pass through costs that are assessed by a third party to the Exchange if such costs are attributable to transactions executed through the ITS Plans.⁹

While SR-NSX-2006-10 was effective upon filing, Rule 16.3 allows the Exchange to delay the effectiveness of Chapter XVI until it gives written notice to its ETP Holders. The Exchange will give notice declaring Rule 16.1(a) and 16.1(c) of Chapter XVI effective solely to implement the pass-through cost provisions for transactions executed through the ITS Plans. All other fees continue to be governed by Rule 11.10 for National Securities Trading System Fees. Moreover, nothing in the proposed Fee Schedule alters in any way any fees otherwise owed under NSX Rule 11.10.

Pursuant to newly approved Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange." ETP Holders and others using the Exchange will be advised of these fees through the Exchange's Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular declaring Rule 16.1(a) and 16.1(c) of Chapter XVI effective, and attaching the new Fee Schedule applicable to transactions through the ITS plans.

The fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its

obligations under Section 6(b) of the Act.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it involves a member due, fee or other charge. At any time within 60 days of the filing of such 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. Please include File

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Since October 1, 2006, the effective date of the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("Linkage Plan"), connectivity between markets is provided pursuant to the Linkage Plan. See Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving the NMS Linkage Plan).

⁶ See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006).

⁷ See Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (Rule 16.3 provides that the new Chapter XVI will become effective upon written notice by the Exchange to the ETP Holders).

⁸ As set forth in Release No. 34-54194, the Exchange proposed to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its rules.

⁹ See Securities Exchange Act Release Nos. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) and 54480 (September 21, 2006) 71 FR 57596 (September 29, 2006) (which allow Linkage Plan participants to directly bill, and to accept direct billing from, any such Linkage Plan participants that are unable to implement Sponsoring Member billing by October 1, 2006.)

¹⁰ 15 U.S.C. 78f(b).

¹¹ See *id.*

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

Number SR-NSX-2006-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NSX-2006-12. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 filings will also be available for inspection and copying at the principal office of the Exchange. 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-NSX-2006-12 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.¹⁵

Nancy Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54694; File No. SR-NYSE-2006-93]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Rule 607 Concerning the Use of the Random Selection Method To Appoint Arbitrators in Matters Not Involving Customers

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 24, 2006, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 is proposing to amend Rule 607(c) to provide that in all arbitration matters not involving customers, claimants may use the "Random List Selection" method for arbitrator appointment. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 607. Appointment of Arbitrators

(c) Party Requests for [Agreement on Arbitrator Selection] Random List Selection

If the customer [or non-member] requests in writing within 45 days from the time the statement of claim is filed, [or, if all parties agree and so notify the Exchange within that time frame,] arbitrators will be selected according to Random List Selection, as described below. *In all arbitration matters not involving customers, if the claimant requests in writing within 45 days from the time the statement of claim is filed, arbitrators will be selected according to Random List Selection, as described below.* The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree.

* * * * *

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 change. The text of these statements 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

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 industry arbitrators. Each party is then allocated strikes against these arbitrators.³ 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.⁴ 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.⁵ 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.

³ NYSE Rule 607(c)(2)(i).

⁴ NYSE Rule 607(c).

⁵ NYSE Rule 607(b).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ 17 CFR 200.30-3(a)(12).