trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG.

As stated, when a broker-dealer, or a broker-dealer's affiliate such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange has represented that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI Indices.

*B. Dissemination of Information about the Shares*

In approving the Funds for listing and trading on the NYSE, the Commission notes that the Underlying Indexes are broad-based indexes. If there is an overlap between the foreign jurisdiction and the NYSE trading hours, these index values are disseminated through various main market data vendors at least every 60 seconds during such overlap in trading hours. Otherwise, the Funds provide the Index closing value at *http://www.iShares.com*. Additionally, the Commission notes that the Exchange will disseminate through the facilities of CTA during NYSE trading hours at least every 15 seconds a calculation of the IOPV (which will reflect price changes in the applicable foreign market and changes in currency exchange rates), along with an updated market value of the Shares. Comparing these two figures will help investors to determine whether, and to what extent, the Shares may be selling at a premium or discount to NAV and thus will facilitate arbitrage of the Shares in relation to the Index component securities.

The Commission also notes that the Web site for the Funds *(http://www.iShares.com)*, which is and will be publicly accessible at no charge, will contain the Shares' prior business day NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV.

*C. Listing and Trading*

The Commission finds that the Exchange's rules and procedures for the proposed listing and trading of the Funds are consistent with the Act. Shares of the Funds will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, specialist activities, stop and stop limit orders, prospectus delivery, and customer suitability requirements. In addition, the Funds will be subject to NYSE listing and delisting/halt rules and procedures governing the trading of Index Fund Shares on the Exchange. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including suitability and prospectus delivery requirements.

*D. Accelerated Approval*

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[33] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in NYSE Rule 703.16 (ICUs), and the Commission has previously approved the listing of these securities on the Amex.[34] In addition, the Commission finds that this proposal is similar to several instruments currently listed and traded on the exchange.[35] Therefore, the Commission does not believe that the proposed rule change raises issues that have not been previously considered by the Commission.

## V. Conclusion

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSE–2005–70), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5–6626 Filed 11–28–05; 8:45 am]

**BILLING CODE 8010–01–P**

[33] 15 U.S.C. 78s(b)(2).

[34] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (approving the listing and trading of the ICUs for trading on the Amex).

[35] *See, e.g.*, Securities Exchange Act Release No. 52178 (July 29, 2005), 70 FR 46244, (August 9, 2005) (SR–NYSE–2005–41).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–52822; File No. SR–NYSE–2005–02]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1, 2 and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change Relating to Exchange Rule 607

November 22, 2005.

## I. Introduction

On January 4, 2005, the New York Stock Exchange, Inc. (''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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Exchange Rule 607 concerning the procedures for the appointment of arbitrators to arbitration cases administered by the NYSE. On May 12, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] On May 13, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (''Amendment No. 2).[4] On June 16, 2005, the NYSE filed Amendment No. 3 to the proposed rule change (Amendment No. 3).[5] The proposed rule change was published for comment in the **Federal Register** on June 23, 2005.[6] The Commission received four comments on the proposal, as amended.[7] On November 10, 2005, the

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

[2] 17 CFR 240.19b–4.

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

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

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

[6] *See* Exchange Act Release No. 51863 (June 16, 2005), 70 FR 36451 (June 23, 2005) (the ''Notice'').

[7] *See* Letters from Robert S. Clemente, Of Counsel, Liddle and Robinson, to Jonathan G. Katz, dated February 3, 2005 and July 7, 2005 (''Clemente Letters''); Letter from Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, to Jonathan G. Katz, dated July 14, 2005 (''Shockman Letter''); and Letter from Richard P. Ryder, President, Securities Arbitration Commentator, Inc. to Jonathan G. Katz, dated July 15, 2005 (''Ryder Letter''). Mr. Clemente filed two letters in response to the filing, the first of which was received after filing of the proposed rule change but before publication in the **Federal Register**. Mr. Clemente submitted a second letter, similar to the first, after the proposed rule change was noticed in the **Federal Register**, and attached the first letter to the second.

Exchange filed Amendment No. 4 to the proposed rule change (''Amendment No. 4''),[8] and on November 14, 2005, the Exchange filed a response to the comment letters.[9] This order approves the proposed rule change, as amended by Amendments Nos. 1, 2 and 3, grants accelerated approval to Amendment No. 4 to the proposed rule change, and solicits comments from interested persons on Amendment No. 4.

## II. Description of the Proposed Rule Change

### *A. Description of the Proposal*

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).[10] Upon expiration of the two-year pilot, the NYSE renewed the pilot for an additional two years, ending on July 31, 2004.[11] The pilot was subsequently extended again until January 31, 2005,[12] then July 31, 2005,[13] and ultimately was extended until November 30, 2005.[14]

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 chosen 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 Proposed Rule Change

The proposed amendments to Rule 607 retain the traditional method of staff appointment of arbitrators as an option in the event a full panel cannot be appointed under Random List Selection or in the event that the customer or non-member does not elect to use the Random List Selection method. In addition, the proposed rule change modifies and makes permanent the Random List Selection method by specifying the number of arbitrators on each list (ten public arbitrators and five industry arbitrators) and limiting the number of strikes (four against the public arbitrators and two against the industry arbitrators). The proposed rule change also eliminates the second list of arbitrators. According to the NYSE, this will simplify and shorten the appointment process. The proposed rule change also specifies that for simplified arbitrations, the randomly generated list will contain the names of five arbitrators, against which each party will have two strikes. Further, the proposed rule change gives the customer or non-member the choice of using Random List Selection as the method to appoint arbitrators. If a claim includes a customer or a non-member, the election of the customer or non-member controls, and all parties' agreement to use list selection would no longer be required. Finally, because parties rarely requested Enhanced List Selection, the proposed rule change eliminates Enhanced List Selection as a method for selecting arbitrators, but permits parties to choose alternate methods of arbitrator selection pursuant to mutual agreement.

The proposed rule change provides that a party can request an arbitrator's last three NYSE arbitration decisions, if any (the pilot program had provided that these decisions would be sent automatically). The proposed rule change also provides 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 requires, among other things, the Director of Arbitration to provide the parties with the names and employment histories of the arbitrators for the past ten years, and permits a party to request additional information concerning an arbitrator's background. Lastly, the proposed rule change provides that the NYSE will send lists of arbitrators to parties approximately thirty days after the last answer is filed with the Exchange.[15]

c. Comparison to SICA Rules

The proposed amendments resemble the Uniform Code of Arbitration (''UCA'') developed by the Securities Industry Conference on Arbitration (''SICA'').[16] 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 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

[8] In Amendment No. 4, which supplemented the original filing, the Exchange amended the proposed rule text to respond to one of the commenters' concerns.

[9] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated Nov. 14, 2005.

[10] 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).

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

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

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

[14] *See* Exchange Act Release No. 52155 (Jul. 28, 2005), 70 FR 44712 (Aug. 3, 2005) (SR–NYSE–2005–52).

[15] *See* Amendment No. 4.

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

additional information about a potential arbitrator.

• The NYSE permits the parties to agree to extend the time period in which to return the lists.

*B. Comment Summary and NYSE's Response*

a. Comments Received

The proposal was published for comment in the **Federal Register** on June 23, 2005.[17]

We received four comments on the proposal.[18] One commenter believed that the NYSE should withdraw or amend the proposal and that, in light of other amendments to Rule 607, the NYSE's proposed merger with Archipelago, and the NYSE's shift from a private to a public company, the NYSE should not submit any other amendments to its arbitration rules.[19] One of the commenters stated that NYSE's arbitration system had many advantages over NASD's, including lower expenses and greater NYSE staff involvement, but was concerned that NYSE was not presently a reasonable alternative to NASD's arbitration system.[20] This commenter believed that in order to improve the NYSE's system, the NYSE needed to (i) ''[e]mbrace list selection;'' (ii) ''[p]rovide Arbitrator Award histories;'' (iii) ''[a]ppoint the Panel earlier in the case;'' [21] and (iv) ''[g]ive equal encouragement to claims outside NYC.'' In this commenter's view, these changes would make the NYSE a more competitive arbitration forum.[22]

Two commenters, although they approved of certain aspects of the filing, such as the elimination of mutuality for list selection, generally criticized the proposed rule change.[23] They expressed concern that the NYSE was not committed to creating a viable arbitration forum or an alternative to the NASD's arbitration system,[24] that the Exchange limited the number of strikes against potential arbitrators on the list, and that the proposed rule change, including its diversion from SICA rules, was not adequately described.[25] One commenter approved of the filing, but believed that the definition of a ''public arbitrator'' in the rule should be carefully examined to ensure that public arbitrators do not have ties to the securities industry.[26] Another commenter also stated that the Exchange should address the classification of public arbitrators.[27] One commenter was concerned about the procedures for informing parties of the disclosures that arbitrators were required to make on the grounds that these disclosures would not be made before the parties would have to exercise strikes. In this commenter's view, the parties might not learn potentially critical information about the arbitrators until after the arbitrators are appointed (at which time strikes are limited to ''for cause'').[28]

In response to the Commission's specific request for comment on whether the Exchange should automatically send parties a potential arbitrator's prior three arbitration decisions, as provided in the pilot program, whether it should only send such decisions upon a party's request, and whether the Exchange should inform parties that prior arbitration decisions are available on its Web site, two commenters believed that the NYSE should list arbitrator awards on its Web site.[29] One commenter believed that the administrative burden of sending the last three decisions was too high but believed that the NYSE should develop reports from its docket records that are similar to the NASD's reports.[30] The other commenter believed that the Exchange should send the last three arbitration awards to the parties automatically.[31]

b. NYSE's Response to Comments

The NYSE responded to the commenters' concerns by filing an amendment to the proposed rule text to require the Exchange to send out the lists of arbitrators to all parties approximately 30 days after the last answer is due.[32] This addressed the concern that arbitrators should become involved in the process earlier, in order to allow the panel of arbitrators, rather than the NYSE staff, to administer the proceedings.[33]

The Exchange also submitted a letter response to the commenters. The Exchange stated that even though arbitrators still may be appointed pursuant to administrative appointment, it has ''embraced list selection'' [34] by giving the public customer/non-member the ability to elect list selection without requiring the agreement of the member firm. The Exchange also indicated that it retained the traditional method of arbitrator selection as a convenience to public customers.

In addition, the NYSE observed that during the pilot program, it found that parties often struck all names on the first list, requiring distribution of a second list and delaying the process. The Exchange also found that the parties often exercised peremptory challenges on the arbitrators on the second list. The Exchange maintained that the limited number of strikes will result in careful review and ranking of potential arbitrators, leading to a streamlined list selection process. In response to concerns that the ''enhanced list'' method of arbitrator appointment was to be eliminated, the Exchange noted that the parties' ability under the proposed rule change to select any reasonable method of arbitrator appointment would allow them to use enhanced list selection. If the parties agree to use enhanced list selection, arbitrators would be appointed to a panel in the same manner as under the pilot program.

In response to the question of whether the Exchange should provide parties with the ability to access arbitrators' awards and with hard copies of the arbitrators' last three awards, the Exchange noted that parties are advised that the arbitrators' awards are available on its Web site in the cover letter sent to the parties with the proposed names of the arbitrators. The Exchange also noted that the arbitrators' profiles provide information through which the parties can access all awards for each arbitrator on the NYSE Web site. The Exchange opined that it was inefficient to send out the last three awards automatically, and that the availability of the awards on the Web site would be sufficient to satisfy the parties' need for the awards. The Exchange also noted that it will continue to send out the last three awards to the extent that the parties request them, and that the Exchange will inform the parties of that option in the cover letter sent with the lists of arbitrators.

In response to commenters' concerns with the classification of public arbitrators, the Exchange noted that it had filed a separate proposed rule change, NYSE–2005–43,[35] addressing the question of when arbitrators should be classified as ''public.'' In response to

[17] *See* note 6, *supra.*

[18] *See* note 7, *supra.*

[19] Clemente Letters.

[20] *See* Ryder Letter.

[21] The commenter favorably cited the NASD's system of involving arbitrators at the pleading stage in his comments. *See* Ryder Letter.

[22] Ryder Letter.

[23] Ryder Letter, Clemente Letters.

[24] Ryder Letter.

[25] Clemente Letters.

[26] Shockman Letter.

[27] Clemente Letters.

[28] Clemente Letters.

[29] Clemente Letters, Ryder Letter.

[30] Ryder Letter.

[31] Clemente Letters.

[32] *See* Amendment No. 4.

[33] *See* Ryder Letter.

[34] *See supra* note 22.

[35] *See* Exchange Act Rel. No. 52314 (Aug. 22, 2005), 70 FR 51104 (Aug. 29, 2005) (SR–NYSE–2005–43).

one commenter's concern with the timing of the disclosure of arbitrator conflicts, the Exchange noted that an arbitrator's duty to disclose conflicts pursuant to Rule 610 is a continuing duty, and additional information received by the Exchange pursuant to Rule 610 is immediately forwarded to the parties.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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 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 December 20, 2005.

**IV. Discussion and Findings**

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b)[36] of the Act in general and section 6(b)(5) of the Act[37] in particular, which require that the rules of the Exchange 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.[38] The proposed rule change makes permanent the pilot program allowing for list selection of arbitrators, but does so with modifications that make it easier for customers to opt for list selection, while retaining the method of traditional arbitrator appointment as an alternative for parties. The proposed rule change institutes a system of selecting arbitrators that is comparable to the SICA's UCA and that of the NASD. Although commenters expressed concerns with various of the modifications between the pilot program and the amendments to NYSE Rule 607 put forth in the proposed rule change, including the elimination of the second list and the limitations on preemptive strikes, the Exchange described the way these provisions had operated during the Exchange's administration of the pilot program, and explained the ways in which these provisions had appeared to the Exchange to delay the arbitration process. In light of the Exchange's experience with the pilot program, the Exchange's decision to eliminate these provisions of the pilot program appears reasonable. The Exchange also explained that arbitrator's past awards are readily available to parties, and that the last three arbitrator award decisions will be sent to parties should they request it. The NYSE also amended its Rule 607 in order to provide for a time period in which the lists of arbitrators should be sent to the parties that is the same as the NASD's requirement, creating consistency between the two systems.

We believe that the proposed amendments to NYSE Rule 607 will provide the NYSE with a list selection mechanism for selecting arbitrators comparable to that of the NASD and SICA's UCA, and that the list selection process will give customers increased involvement in the selection of the arbitrators who will hear their claims, leading to increased investor confidence in the NYSE's arbitral selection system.

Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 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.[39] Amendment No. 4 provided a time period in which the NYSE would be required to provide the parties with lists of arbitrators. Setting a specific time for sending the lists of arbitrators to the parties will create consistency across the arbitration system in place at the NYSE. Further, the timing of the NYSE's sending of the lists to parties is identical to that of the NASD, thereby creating consistency between the two arbitration systems. The Commission finds that, given the benefits of having the Exchange set a specific time for sending out the lists of arbitrators, it is appropriate for the Exchange to amend the proposed rule text to reflect consistency in the involvement of arbitrators in the process. Accordingly, the Commission believes that accelerated approval of Amendment No. 4 is appropriate.

**V. Conclusion**

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act[40] that the proposed rule change (SR–NYSE–2005–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5–6653 Filed 11–28–05; 8:45 am]

**BILLING CODE 8010–01–P**

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–52790; File No. SR–OCC–2005–13]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fees for Certain Transactions Executed on OneChicago, LLC

November 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934