SECURITIES AND EXCHANGE COMMISSION

[Release No. 52314; File No. SR–NYSE–2005–43]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Rule 607 Relating to the Classification of Arbitrators as Public or Industry

August 22, 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 June 17, 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 August 4, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] The Commission 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 an amendment to New York Stock Exchange, Inc. Rule 607 relating to the classification of arbitrators as public or industry. The text of the proposed rule change, as amended, 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 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.

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

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

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, which supplemented the original filing, the Exchange modified the implementation date for the proposed rule change and clarified certain aspects of the filing.

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

1. Purpose

In arbitrations involving customers or non-members where the damages are alleged to exceed $25,000, arbitration panels are comprised of three arbitrators, two public arbitrators and one from the securities industry. The customer or non-member may request at least a majority of arbitrators from the securities industry.

Under Exchange Rule 607(a)(2), an arbitrator is currently classified as being from the securities industry if he or she: (1) Is, or within the past five years was, associated with certain entities related to the securities industry (or is retired from, or spent a substantial part of his or her career with such an entity); (2) is an attorney or other professional who devoted 20 percent or more of his or her work effort to securities industry clients within the past 2 years; or (3) is registered under the Commodity Exchange Act, or is a member of a registered futures association or any commodity exchange or is associated with any such person.

Under Exchange Rule 607(a)(3), an arbitrator who is not from the securities industry is classified as a public arbitrator. However, a person cannot be classified as a public arbitrator if he or she has a spouse or household member who is associated with certain entities related to the securities industry.

The NYSE is concerned that some arbitrators currently classified as public have affiliations with entities that have securities industry ties such as banks, insurance companies, mutual funds, holding companies and asset management firms. In an effort to enhance investor confidence in the NYSE arbitration forum, and in order to further ensure that persons serving as public arbitrators do not have ties to the securities industry or related firms, the Exchange is proposing to amend Rule 607. The proposed amendments would: (1) Expand the list of entities engaged in the securities business by adding certain membership categories not previously specifically mentioned (but, nevertheless, contemplated by the current rule), and by adding a catch-all for any ''other organization engaged in the securities business;'' (2) preclude any individual who is associated with any entity that controls, is controlled by, or is under common control with an entity on the expanded list from being classified as a public arbitrator; and (3) preclude any individual from being classified as a public arbitrator who has an immediate family member associated with an entity on the expanded list. The amendment also defines which persons are included within the term ''immediate family member.''

In order to ensure the integrity of the classification of public arbitrators, the Exchange will update and reclassify arbitrators in compliance with the amended rule, once approved.

The proposed amendments resemble a provision in the Uniform Code of Arbitration (''UCA'') developed by the Securities Industry Conference on Arbitration.[5] Aside from word choice and punctuation, the principal differences between the proposed rule change and the UCA are as follows:

- The UCA states that a person with a spouse or other member of the household who could be classified as being from the securities industry as set forth immediately above will not be classified as a public arbitrator. The NYSE proposed amendment expands the UCA provisions by excluding a person from being classified as a public arbitrator if the person has an ''immediate family member,'' which includes a spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, and anyone who shares such person's home (excluding domestic employees), associated with any of the entities in the NYSE proposed amendment as set forth immediately above.

- The NYSE proposed amendment states that a person will not be classified as a public arbitrator if the person is associated with an entity that, directly or indirectly, controls, is controlled by, or is under common control with, a member, allied member, member organization, broker/dealer, government securities broker, government securities dealer, municipal securities dealer, registered investment adviser, or other organization that is engaged in the securities business. The UCA does not have this provision.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) [6] of the Act in general and Section 6(b)(5) of the Act [7] 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.

[5] The NASD has a rule similar to the UCA provision. *See* NASD Rule 10308(a).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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.

The Exchange has stated that the rule will become effective 90 days following the publication in the **Federal Register** of the Commission's approval of the rule change.

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. 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–2005–43 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–2005–43. 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–2005–43 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4715 Filed 8–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52315; File No. SR–PCX–2005–93]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

August 22, 2005.

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 August 16, 2005, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX has designated this proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective immediately 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 PCX proposes to amend PCX Rule 6.82 to include an additional obligation of Lead Market Makers (''LMMs'') in executing public customer orders. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the PCX 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 PCX 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 PCX proposes to amend PCX Rule 6.82(c), Obligations of Lead Market Makers, to include a requirement that LMMs address public customer orders that are not automatically executed on the PCX because there is a better price on another exchange, by either matching the best price that is being disseminated by a competing exchange or by routing the public customer order via Intermarket Option Linkage (''Linkage'') for execution at any other exchange disseminating the best price.

Similar to rules at other exchanges, PCX rules do not allow for a public customer order to be executed at a price that is inferior to a price that may be available on another exchange. The intent of this rule is to give a public customer order the opportunity to obtain the best price available in the market at any given time. Using present procedures, attempting to obtain the

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).