

### 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 Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a member due, fee, or other charge imposed by NASD. 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.<sup>12</sup>

### 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-2006-094 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASD-2006-094. 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-2006-094 and should be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,

Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54491; File No. SR-NYSE-2005-09]

#### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Rule 409 Regarding Statements of Accounts to Customers and Proposed New Rule 409A Regarding SIPC Disclosure

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 14, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule

change.<sup>4</sup> 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 amend NYSE Rule 409(e) to require that each statement of account sent to a customer include a legend advising the customer to promptly report any inaccuracy or discrepancy in that person's account to his or her brokerage firm. If the account is subject to a clearing agreement pursuant to NYSE Rule 382, amended NYSE Rule 409(e) would require the legend to advise that the customer's notification be sent to both the introducing firm and the clearing firm. The legend also would need to advise the customer that he or she should reconfirm any oral communications with either the clearing or introducing firm in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA). The Exchange is also proposing to adopt a new rule, NYSE Rule 409A, which would require member organizations to advise each customer in writing, upon the opening of an account and at least annually thereafter, that he or she may obtain information from the Securities Investor Protection Corporation (SIPC). Proposed Rule 409A would require the written advisories to include SIPC's Web site address and telephone number, and, if the account is subject to a clearing agreement pursuant to NYSE Rule 382, the rule would permit its requirements to be delegated to either the introducing firm or the clearing firm.

The text of the proposed rule change is set forth below. Additions are *italicized*. Deletions are [bracketed].

#### Rule 409

##### Statements of Accounts to Customers

(a) through (d)—No change.

(e) Each statement of account sent to a customer pursuant to this rule shall *include the following*:

(1) [bear a] A legend [as follows] *that reads*: "A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request."

(2) *A legend that advises customers to report promptly any inaccuracy or discrepancy in that person's account to*

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> In Amendment No. 1, NYSE withdrew its proposal to amend NYSE Rule 409(a), which would have permitted institutional customers conducting a Delivery versus Payment and Receive versus Payment ("DVP/RVP") business to opt out of receiving customer account statements. NYSE refilled this proposal in File No. SR-NYSE-2005-90.

<sup>4</sup> In Amendment No. 2, NYSE proposed additional changes to NYSE Rule 409(a) and proposed new NYSE Rule 409A, which are discussed below.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> See footnote 3, *supra*.

his or her brokerage firm. If a customer's account is subject to a clearing agreement pursuant to Rule 382, the legend must advise that such notification be sent to both the introducing firm and the clearing firm. The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA).

(f) through (g)—No change.

Supplementary Material—No change.

#### Rule 409A

##### SIPC Disclosures

Member organizations must advise each customer in writing, upon the opening of an account and at least annually thereafter, that they may obtain information about the Securities Investor Protection Corporation (SIPC), including the SIPC Brochure, by contacting SIPC, and shall provide the Web site address and telephone number of SIPC. If a clearing agreement pursuant to Rule 382 exists, the requirements of this rule may be delegated to either the introducing firm or the clearing firm.

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

In filing the proposed rule change, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

##### Amendments to Rule 409(e)

In response to recommendations by the U.S. General Accounting Office (the "GAO"), the Exchange proposes amendments to Rule 409(e) that would require customer account statements to bear a legend that advises customers to promptly notify their brokerage firm of any inaccuracy or discrepancy in the account statement.<sup>5</sup> The legend must

also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA). This requirement is included to create a written record for the purpose of protecting customer interests.<sup>6</sup> In addition to heightening customer awareness regarding information reflected on their statements, the advisory will encourage customers to submit a written record of any possible unauthorized trading activity, unrecorded dividend payments, and unaccounted cash positions. The GAO deems this to be important because, in the event a firm goes into a liquidation administered by SIPC, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise. The Commission has approved a substantially similar rule change proposed by NASD.<sup>7</sup>

#### Proposed New Rule 409A

Also, in response to the GAO's recommendations, and to further promote investor awareness, the Exchange proposes new Rule 409A, which would require member organizations to advise customers in writing, upon the opening of an account and at least annually thereafter, that they may obtain information from SIPC, including the SIPC Brochure, by contacting SIPC via its Web site or by telephone. The proposed rule would also require the written advisories to include the SIPC Web site address and telephone number. If a clearing agreement pursuant to Rule 382 exists, the requirements of this rule could be delegated to either the introducing firm or the clearing firm.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections

SIPC (July 9, 2004). GAO has since been renamed the Government Accountability Office.

<sup>6</sup> NYSE Information Memo No. 98-16, dated April 4, 1998, states that oral complaints are reportable under Rule 351(d) (Reporting Requirements). The Exchange expects that oral customer complaints will be investigated and treated in the same manner as written complaints.

<sup>7</sup> See Order Approving Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements, Securities Exchange Act Release No. 54411 (Sept. 7, 2006).

6(b)(5) of the Exchange Act.<sup>8</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market, and protect investors because it will help investors understand procedures for preserving their rights in the event of erroneous or unauthorized transactions in their accounts.

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

The Exchange believes that the proposal does not impose any burden on competition that is 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 Change Received From Members, Participants or Others

The Exchange 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 Exchange is proposing an effective date of 180 days after SEC approval of the proposed amendments to Rule 409(e) and proposed new Rule 409A. This will give member organizations time to make necessary changes to their customer documentation and systems.

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 Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change 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

<sup>5</sup> See GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors*, GAO-01-653 (May 25, 2001). See also GAO-03-811 (July 11, 2003); GAO-04-848R Follow-Up on

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

change, as amended, 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-2005-09 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-2005-09. 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 Section, 100 F Street, NE., Washington, DC 20549. 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 submission should refer to File Number SR-NYSE-2005-09 and should be submitted on or before October 23, 2006.

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

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54490; File No. SR-NYSEArca-2006-61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Existing Rules for Investment Company Units

September 22, 2006.

Pursuant to the provisions of 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 September 19, 2006, NYSE Arca, Inc. (the "Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, proposes to amend Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

(b) Index Methodology and Calculation.

(1) The index underlying a series of Units will be calculated based on [either] the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting *or a methodology weighting components of the index based on any, some or all of the following: sales, cash flow, book value and dividends;*

\* \* \* \* \*

#### 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 III 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 has adopted listing standards applicable to Investment Company Units ("Investment Company Units" or "ICUs") that are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.<sup>3</sup> An Investment Company Unit is defined in NYSE Arca Equities Rule 5.1(b)(15) as a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.<sup>4</sup>

The "generic" listing criteria of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) permits listing or trading pursuant to UTP of ICUs that satisfy such criteria in reliance upon Rule 19b-4(e) under the Act<sup>5</sup>, without a filing pursuant to Rule 19b-4 under the Act.<sup>6</sup> Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) requires that if a series of ICUs approved for trading (including pursuant to UTP) on the Exchange in reliance upon Rule 19b-4(e) under the Act,<sup>7</sup> the index underlying the series of ICUs must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or

<sup>3</sup> In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units. Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999)(SR-PCX-1998-29). In July 2001, the Commission also approved the Exchange's listing standards pursuant to Rule 19b-4(e) for listing and trading, or the trading pursuant to UTP, of Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3). Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716-01 (July 19, 2001)(SR-PCX-2001-14).

<sup>4</sup> 15 U.S.C. 80a.

<sup>5</sup> 17 CFR 240.19b-4(e).

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

<sup>7</sup> 17 CFR 240.19b-4(e).

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

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

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