

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-22484 Filed 8-31-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43214; File No. SR-NYSE-00-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Supplemental Procedures by the New York Stock Exchange, Inc. Relating to Arbitration Rules

August 28, 2000.

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> notice is hereby given that on August 1, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. 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 purpose of the proposed Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607.

#### 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 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 purpose of the proposed Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The Supplemental Procedures are based on Rules approved by the Securities Industry Conference on Arbitration ("SICA") that establish a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them. The Supplemental Procedures invite the parties to select their own arbitrators or agree on a procedure to select arbitrators. The Supplemental Procedures also suggest two ways the parties can select arbitrators instead of having the Exchange appoint them.

*NYSE Appoints Arbitrators Under Rules 601 and 607.* Under NYSE Rules 601 and 607, the Director of Arbitration appoints arbitrators to serve on each case. The Director generally delegates this task to a staff attorney. Each party has one peremptory challenge that allows the party to remove an arbitrator without specifying a reason. The parties have unlimited challenges for cause.

In 1998, the NASD amended its rules to require that all arbitrators be appointed using a rotational list selection system. Their rule differs somewhat from the SICA Uniform Code and the Exchange's proposed Supplemental Procedures.

*Voluntary Supplemental Procedures for Selecting Arbitrators* (a) *Party Agreement on Arbitrator Selection.* Under Exchange Rules, described above, the Director of Arbitration appoints the arbitrators, subject to the parties' challenges. The parties, however, may agree on an alternative way to select arbitrators. If all parties agree, they may select the arbitrators themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method.

(b) *Random List Selection.* Under Random List Selection, the Exchange provides the parties with a list of names of arbitrators randomly generated by computer. Except as described below, the list will have fifteen names. Ten of the arbitrators will be public arbitrators

as defined by NYSE Rule 607(a)(3) and five will be securities industry arbitrators as defined by NYSE Rule 607(a)(2), unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. If, in the determination of the Exchange, the limited size of the arbitrator pool in a particular city makes a list of fifteen impractical, the lists may be limited to nine arbitrators; six public arbitrators and three securities industry arbitrators. Before the Exchange sends the lists of the parties, it will review the arbitrators' profiles for obvious conflicts or relationships with the parties or their counsel. The Exchange will replace those with conflicts by having the computer randomly select the name of a replacement arbitrator. The parties are also provided with the arbitrators' biographical and disclosure information as specified in NYSE Rules 608 (Notice of Selection of Arbitrators).

Within ten business days of receiving the lists, the parties may strike any or all of the names on the list. The parties are asked to number the remaining names in order of their preference (with "1" being the highest preference) and return the lists to the Exchange. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. The Exchange eliminates the names stricken and determines the ranking of the remaining names by adding the parties' rankings. The NYSE determines mutual preferences by adding the numbers assigned by each party to each arbitrator and selecting arbitrators with the lowest numbers first. The Exchange invites arbitrators to serve in order of the parties' combined preferences. In cases of a tie in the rankings, arbitrators will be invited to serve in alphabetical order.

If the Exchange cannot assemble a panel of arbitrators from the parties' lists, the Exchange will provide the parties with a second randomly generated list of names. The second list will have three names for each open seat on the panel. On the second list, each party has one non-renewable peremptory for each vacancy on the panel. Each party is to number the remaining names in order of its preference. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. If there remains more than one name per vacancy after the parties have exercised their strike, the Exchange will invite arbitrators to serve in order of the parties' combined preferences. In the

<sup>9</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.

case of a tie, the Exchange will invite arbitrators to serve in alphabetical order.

The Exchange will notify the arbitrators of their selection and advise the parties of any disclosures under Rule 610.

(c) **Enhanced List Selection.** The second alternative is a hybrid of Exchange Rules and Random List Selection. Under Enhanced List Selection, the Exchange provides the parties with the names and profiles of nine arbitrators; six public arbitrators and three securities industry arbitrators, unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. The staff attorney selects these arbitrators based upon their qualifications and experience. The parties may exercise three peremptory challenges and number, in order of their preference (with "1" being the highest preference) the remaining names. If the Exchange removes any arbitrator from the list for cause before the end of the time to return the lists, the Exchange will provide a replacement name. The staff attorney then invites the arbitrators to serve based upon the parties' combined rankings. In case of a tie in the rankings, the Exchange will invite arbitrators to serve in alphabetical order.

If the Exchange cannot appoint a complete panel from the list, the staff attorney will appoint an arbitrator or arbitrators to complete the panel. Each party has one non-renewable peremptory challenge for each arbitrator the Exchange appoints. A party must use a peremptory challenge within ten business days of receiving notice of the appointment. The parties have unlimited challenges for cause.

**Voluntary Pilot Program.** The Exchange does not believe a rule requiring one of the alternative selection methods is appropriate at this time. Since July of 1998, the Exchange has offered parties the opportunity to select arbitrators on a voluntary basis similar to those detailed above. The Exchange has attempted to gauge the parties' interest in using alternatives to appoint arbitrators. After approximately 24 months of offering these alternatives, less than 15 percent of the parties in arbitration have chosen the alternatives. The modest rate of acceptance leads us to recommend that the alternatives be continued on a voluntary basis.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>3</sup> of the Act 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.

### *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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate,<sup>4</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>6</sup>

The Commission also notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests a waiver of this 30-day period for the following reasons. First, the Supplemental Procedures are voluntary. Second, the Exchange notes that it based its Supplemental Procedures on the Uniform Code of Arbitration developed by SICA. Finally, the Exchange notes that the Commission approved a similar rule change by the National Association of Securities Dealers, Inc. that provides for a list selection of arbitrators.<sup>7</sup> For the reasons discussed above, the Commission finds that the waiver of the 30-day period is consistent with the protection of investors and the public interest.<sup>8</sup>

<sup>4</sup> The Exchange provided the Commission with the five business day notice required by Rule 19b-4(f)(6) of the Act on July 25, 2000.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> See Exchange Act Release No. 40555 (October 14, 1998), 63 FR 56670 (October 22, 1998).

<sup>8</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

At any time within 60 days of the filing of the proposed rule change, as amended, 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-00-34 and should be submitted by September 22, 2000.

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

**Margaret H. McFarland,**

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[FR Doc. 00-22480 Filed 8-31-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43207; File No. SR-NYSE-00-17]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Format Requirements for Securities Certificates

August 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 1, 2000, the New York Stock

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(5).