

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40524; File No. SR-NYSE-98-27]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration Rules

October 6, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1998,¹ 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposed amendment to Rule 600 will exclude shareholder derivative actions from arbitration. The proposed amendments to Rules 604 and 621 will allow arbitrators to dismiss pleadings, with or without prejudice, as a sanction for a willful failure to comply with their orders. The proposed amendments to Rules 608 and 613 will increase the minimum notice of the appointment of arbitrators and the initial hearing date from eight to 15 business days. The proposed amendments to Rules 609 and 611 will extend the time to exercise a peremptory challenge from five to ten business days. The proposed amendment to Rule 627 will require the award to be served contemporaneously on all parties and will allow the Exchange to serve awards via facsimile or other electronic means. New Rule 638 will require, on a two year pilot basis, a single mediation session in non-customer cases, where the amount of the claim is \$500,000 or more. Rule 638 will also provide mediation, with the parties' consent, in cases involving public customers where the amount of the claim is \$500,000 or more. The mediator's fee for this required first session will be borne by the Exchange. In addition, the Rule provides for

mediation in all other cases upon the consent of the parties and at their expense. New rule 639 will require, on a two year pilot basis, an administrative conference between the parties and arbitrators in all cases where the amount of the claims is \$500,000 or more.

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 self-regulatory organization 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 self-regulatory organization 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 NYSE states that the proposed rule change, with the exception of amendments to Rule 600 and new Rules 638 and 639, is based on proposals developed by the Securities Industry Conference on Arbitration.

The Exchange proposes to amend Rule 600 to exclude shareholder derivative actions from arbitration. The Exchange's Arbitration rules already exclude class actions. The Exchange believes that shareholder derivative actions, like class actions, are representative in nature. "Shareholder controversies are not appropriately within the mandatory arbitration provisions of the Exchange's Constitution."² The NYSE believes that the court system is better equipped to manage shareholder derivative actions which involve parties in different jurisdictions and issues such as the notification of shareholder, the appointment of counsel and the awarding of attorneys' fees. In the past, the Exchange has declined the use of its arbitration facilities for shareholder derivative actions. Under Article XI, Section 3 of the Exchange Constitution, the Exchange has discretion to "decline in any case to permit the use of the arbitration facilities of the Exchange." The Exchange's arbitration rules were

not intended to provide a forum for shareholder derivative actions on behalf of member firms that are organized as corporations.

The Exchange proposes amendments to Rules 604 and 612 to provide that arbitrators may dismiss claims or defenses, with or without prejudice, as a sanction for a willful failure to comply with their orders. This amendment is intended to encourage compliance with the arbitrators' orders on discovery issues and other pre-hearing matters. The Exchange will keep records on any dismissals under the amended rules.

The proposed rule change amends Rules 608 and 613 to provide that the minimum notice of the appointment of arbitrators and the initial hearing date be extended from eight to 15 business days. The amendment is intended to give the parties greater notice of the hearing date and additional time to evaluate the arbitrators.

The proposed rule change amends Rules 609 and 611 to extend the parties' time to exercise a peremptory challenge from five to ten business days after notification of the identity of the arbitrators. The amendment will give the parties more time to research the arbitrators' backgrounds and decide whether to exercise a peremptory challenge.

The proposed rule change amends Rule 627 to provide that the Exchange may serve awards via facsimile or other electronic means. The award will be served contemporaneously on all parties. The amendment is intended to enable the Exchange to deliver the award in the fastest and most reliable way. The amendment is intended to adapt Exchange arbitration practices to technological changes.

The proposed rule change adds new Rule 638 which requires, on a pilot basis for two years from the date of Commission approval, a single mediation session, in non-customer cases where the amount of the claim is \$500,000 or more. The mediator's fee for this first session will be borne by the Exchange. The pilot will also provide for mediation, with the parties' consent, in cases involving public customers where the amount of the claim is \$500,000 or more. The mediator's fee for this first session will be borne by the Exchange. Moreover, mediation will be available upon the consent of the parties and at their expense in all other cases. Where the parties have not selected a mediator on their own, the Exchange will provide the names and profiles of five mediators. The current "Arbitrator Profile" form will be used to provide the parties with biographical and disclosure data regarding the proposed mediators.

¹ The Exchange filed Amendment No. 1 to the proposed rule change on September 28, 1998, the substance of which is incorporated into this notice. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Commission, dated September 24, 1998 ("Amendment No. 1").

² *In re Salomon Inc. Shareholders' Derivative Litigation*, 68 F.3d 554, 556 (1995) (Judge McLaughlin of the Second Circuit quoting from the exchange's decision denying jurisdiction in a shareholder derivative action).

The profile form includes the employment histories of the mediators for the past 10 years and any information disclosed regarding conflicts of interest. The profile also includes information about the mediator's education, business and professional background, mediation experience and training and memberships in professional associations. Mediation is a voluntary method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. When mediation is successful, cases are settled earlier, often with significant cost savings. The parties' rights are protected since any settlement is reached with their participation and agreement.

Finally, the proposed rule change adds new Rule 639 to require, on a pilot basis for two years from the date of Commission approval, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is \$500,000 or more. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules resolve discovery disputes and other preliminary matters. The conference is intended to expedite the arbitration by narrowing the issues in dispute and avoiding costly contests over procedural matters.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act³ in that they promote just and equitable principles of trade by insuring the 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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Within 35 days of the 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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-98-27 and should be submitted by November 4, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Curtis B. Rich, Management Analyst,

Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "8(a) Export Survey Initiative".

Type of Request: Revision of a currently approved collection.

Form No.: 2068.

Description of Respondents: 8(a) Firms.

Annual Responses: 200.

Annual Burden: 33.

Comments: Send all comments regarding this information collection to, William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street S.W., Suite 8000, Washington, D.C. 20416. Phone No.: 202-205-6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98-27497 Filed 10-13-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3138]

State of Alabama

As a result of the President's major disaster declaration on September 30, 1998, I find that the following Counties in the State of Alabama constitute a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing: Baldwin, Clarke, Coffee, Covington, Crenshaw, Escambia, Geneva, Mobile, Monroe, and Washington. Applications for loans for physical damage may be filed until the close of business on November 29, 1998 and for economic injury until the close of business on June 30, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Butler, Choctaw, Conecuh, Dale, Houston, Lowndes, Marengo, Montgomery, Pike, and Wilcox in the State of Alabama. Any counties contiguous to the above-

³ 15 U.S.C. 78f(b)(5).