in Item III below. The NYSE 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 proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange seeks to adopt a reduced fee structure for mergers between an NYSE-listed company and a non-NYSE listed company, other than for those considered to be ''back door listings'' pursuant to Paragraph 703.08(E) of the Manual.

The Exchange proposes to reduce the basic initial listing fee such that the fee is 25% of the applicable basic initial listing fee for the above specified listings that occur within 12 months of the merger. However, if the merger and subsequent listing occur within 12 months of the initial listing of the NYSE-listed company, the Exchange proposes to reduce the basic initial listing fee for the merged entity to the lesser of (a) 25% of the applicable basic initial listing fee for the merged entity; or (b) the full applicable basic initial listing fee for the merged entity less the fee already paid by the NYSE-listed company at the time of its initial listing.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) [3] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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.

[3] 15 U.S.C. 78f(b)(4).

III. 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 in the Commission's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. 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–98–40 and should be submitted by December 21, 1998.

IV. 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.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6 of the Act.[4] More specifically, the Commission believes that the portion of the proposed rule change dealing with the three-month pilot is consistent with section 6(b)(4) of the Act [5] which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.[6] The Commission believes that the proposal may ease the financial burdens of merger transactions with Exchange-listed issuers, thus facilitating capital formation and competition among exchanges and other markets.

The Commission finds good cause for approving the three-month pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This accelerated approval will permit Exchange-listed issuers to take advantage of the Exchange's initial listing fee reduction program on an expedited basis while the Commission undertakes a more exhaustive review of the proposal. Accordingly, the Commission believes that good cause exists, consistent with section 6(b)(5) and section 19(b)(2) of the Act, to grant accelerated approval to the three-month pilot.[7] The Commission notes, however, that approval of the pilot should not suggest a predisposition regarding the ultimate approval of the proposal on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–98–40) is approved on an accelerated basis until February 19, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31817 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] In approving the three-month pilot, the Commission has considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40695; File No. SR–NYSE–98–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Arbitration Rules

November 19, 1998.

I. Introduction

On September 8, 1998, 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 to amend Rule 600 to exclude shareholder derivative actions from arbitration; to amend Rules 604 and 621 to allow arbitrators to dismiss pleadings, with or without prejudice, as a sanction for a willful failure to comply with their orders; to amend Rules 608 and 613 to increase the minimum notice of the appointment of arbitrators and the initial hearing date from eight to fifteen business days; to amend Rule 608 to reflect the proposed change to Rule 609 to extend the time within which to exercise a peremptory challenge, with regard to replacement arbitrators; to amend Rules 609 and 611 to extend the time to exercise a peremptory challenge from five to ten business days; and to amend Rule 627 to require the award to be served contemporaneously on all parties and to allow the Exchange to serve awards via facsimile or other electronic means. The proposed rule change also adds new Rule 638 to 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, and provide for mediation in all other cases upon the consent of the parties and at their expense. Finally, the proposed rule change adds new Rule 639 which will require, on a two year pilot basis, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. 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.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 40524 (October 6, 1998), 63 FR 55170 (October 14, 1998). One comment was received on the proposal.[3] This order approves the proposed rule change as proposed.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephen G. Sneeringer, Chairman, Securities Industry Association (''SIA'') Arbitration Committee, to Margaret H. McFarland, Deputy Secretary, Commission, dated November 3, 1998 (''SIA Letter'').

II. Description

The Exchange proposes to amend Rule 600 to exclude shareholder derivative actions from arbitration. The Exchange also 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. The Exchange will keep records of 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. Additionally, 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 proposed rule change also amends Rule 627 to provide that the Exchange may serve awards via facsimile or other electronic means, and that the Director of Arbitration (''Director'') shall try to serve a copy of the award contemporaneously on all parties.

The proposed rule change adds 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 also 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.[4] The parties have ten days to agree on a mediator from the list, or choose their own mediator. If the parties cannot agree, the Director will select a mediator from the list, unless the parties object to all the names on the list, in which case the Director will appoint a mediator from outside the list.

The NYSE states that the current ''Arbitrator Profile'' form will be used to provide the parties with biographical and disclosure data regarding the proposed mediators. The profile form includes the employment histories of the mediators for the past ten 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 membership in professional associations.

Finally, the proposed rule change adds Rule 639, which requires, 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. The Director shall schedule the conference within thirty days after the answer is filed. At the hearing, the arbitrators can establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the arbitration.

III. Summary of Comments

The Commission received one comment letter on the proposal, which supports the proposed amendments and, subject to certain qualifications and clarifications, supports the new rules pertaining to mediation and administrative conferences.[5]

The SIA supports proposed Rule 638 to the extent it would encourage litigants in non-customer cases of $500,000 or more to participate in a mediation session, but opposes the portion of Rule 638 which would make a mediation session mandatory with respect to these cases. The SIA believes that mediation should always be a voluntary process. In addition, the SIA requests that the final rules, adopting release, or accompanying Information Circular clarify that the mediation sessions or administrative conference provided for in Rules 638 and 639, respectively, be conducted via telephone at the request of any party.

The NYSE, in its response to the SIA Letter,[6] agrees that mediation by its very nature is a voluntary process, but that the proposed rule change does not alter that. The NYSE states that while the rule requires participation in a mediation session, it does not mandate that the mediation be successful, nor does it require the parties to compromise their positions. The NYSE developed the mediation program based upon its experience in non-customer disputes involving large damage claims;

[4] If the parties select their own mediator from outside the list of mediators proposed by the NYSE, the parties are responsible for any difference in the mediator's fee.

[5] *See supra* note 3.

[6] *See* letter from Robert S. Clemente, Director, Arbitration, to Jonathan G. Katz, Secretary, Commission, dated November 11, 1998 (''NYSE Response'').

these cases often contain multiple allegations that can be quickly resolved or eliminated through mediation. In addition, early resolution of some issues can minimize time and expense of resolving core issues. The NYSE states that the mediation program is intended to encourage parties to sit down early in the process and try to find an agreeable resolution before each side incurs the expense of preparing for a hearing.

The NYSE also states that, with regard to conducting mediation and administrative conferences by telephone, the decision on how to proceed should be left to the arbitrators, and that the rule leaves open the possibility that a mediator may decide that a telephone session is sufficient. However, the NYSE states that experience shows that telephone conferences with all three arbitrators become counter-productive, and that while it may be technically possible to conduct a mediation over the telephone, it would be impractical in most circumstances. The Exchange believes that to be successful, a mediation should be conducted in person.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8] In particular, the Commission believes that the proposed rule change will help ensure that NYSE members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission believes it is reasonable for the Exchange to exclude 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,[9] and 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 shareholders, the appointment of counsel and the awarding of attorneys' fees. The Commission also notes that the Exchange has previously declined the use of its arbitration facilities for shareholder derivative actions pursuant to Article XI, section 3 of the Exchange Constitution, which grants the Exchange discretion to ''decline in any case to permit the use of the arbitration facilities of the Exchange.''

The Commission believes that the portion of the proposed rule change to Rules 604 and 612, relating to dismissal of arbitration proceedings with and without prejudice, is consistent with the Act. This portion of the proposed rule change will help provide for a fair, efficient and cost-effective arbitration process by clarifying that the arbitrators can dismiss the proceeding either with or without prejudice; currently, Rule 604 does not distinguish between these two choices. Also, the proposed rule change amends Rule 604 to add that the arbitrators, when dismissing without prejudice, can refer the parties to any dispute resolution forum agreed to by the parties, in addition to their judicial remedies.

The Commission believes that the proposed change to Rule 604 allowing for dismissal with prejudice, which is intended to encourage compliance with the arbitrators' orders on discovery issues and other pre-hearing matters, should help establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the sanction of dismissal with prejudice. Such a sanction could be used, for example, where a party refused to produce documents that the arbitrators already have ordered them to produce as necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with their order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice. The Commission also believes that this proposed rule change would provide for a more efficient arbitration process because it will allow the arbitrators to assert greater control over the proceedings and will provide parties with clear notice of the possible consequences of non-compliance with an order of the arbitrators. It also would help to protect all parties to an arbitration, and ensure that one party to the proceeding does not take advantage of the other.[10]

The Commission believes that the proposed changes to Rules 608, 609, 611, and 613 providing for an extension of time limitations relating to the notice of the appointment of arbitrators and the initial hearing date, peremptory challenges, and arbitrator disclosures are consistent with the Act because they allow the parties additional time to prepare for the arbitration proceedings. Specifically, the amendments will allow parties more time to research and gather information on the arbitrators, in order to evaluate the arbitrators and decide whether to issue a peremptory challenge.[11]

The Commission believes that the proposed change to Rule 627 that allows for service by means other than registered mail or personal service, such as facsimile or other electronic transmission, is reasonable under the Act because it will help to provide for more efficient service. The Commission notes that the proposed rule change provides adequate safeguards to allow for all parties to receive notice of the awards contemporaneously, for purposes of time limitations on post-award motions. 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 Commission believes that it is consistent with the Act to allow for mediation of arbitration because it may result in savings of time and money for

---

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

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

[9] ''Shareholder controversies are not appropriately within the mandatory arbitration provisions of the Exchange's Constitution.'' *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).

[10] The Commission notes that the NYSE has stated its intention to keep records of any dismissals under the amended rules. The Commission believes the NYSE should maintain records of any dismissals so it can monitor the use of this sanction.

[11] The proposed changes extend the time limitations for a party to (1) seek additional information under Rules 608 and 611 about initial and replacement arbitrators, by extending the time that the Director shall inform the parties of the names of the arbitrators, as well as any information on the arbitrators, from eight to fifteen days prior to the initial hearing session, and extending the time within which a party can exercise the right to challenge a replacement arbitrator; and (2) exercise a peremptory challenge under Rules 609 and 611, from 5 days to 10 business days after notification of the identity of the person(s) proposed as arbitrators. In addition, the proposed rule change amends Rule 608 to change the Director's obligation to provide the parties with the names and histories of the arbitrators from eight to fifteen days before the date of the first hearing. Also, the proposed rule change amends Rule 613 to extend the time when the Director must give notice of the time and place of the initial hearing from eight to fifteen business days prior to the date fixed for the hearing.

the parties. Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The NYSE states that when mediation is successful, cases are settled earlier, often with significant cost savings. The Commission recognizes the SIA's concern that mediation should be a voluntary process and that the proposed new rule requires a single mediation session in certain instances. However, the Commission believes that in this instance, where the requirement is limited to non-customer cases, is only for large cases, and is required for a two year period the possible benefits outweigh any perceived inequity.[12] In addition, the Commission notes it is only the first session that is mandatory, that the NYSE is paying the mediator's fee, and that any settlement reached must be with the participation and consent of each party.

Finally, the Commission believes it is reasonable under the Act to require an administrative conference between the parties and the arbitrator in all large cases, in order to attempt to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters.[13]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–98–27) is approved. The mediation program, Rule 638, and the administrative conference rule, Rule 639, are each approved on a two-year pilot basis through November 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[12] The Commission expects the NYSE to review the effectiveness of the requirement over the two year pilot period.

[13] In responses to SIA's comment, the Commission notes that the rules do not restrict arbitrators from conducting mediation sessions and administrative conferences by telephone, and that the decision whether or not to do so is best left to the arbitrators.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31818 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3147]

State of Florida (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated November 16, 1998, the above-numbered Declaration is hereby amended to include Palm Beach County, Florida as a disaster area due to damages caused by Tropical Storm Mitch beginning November 4, 1998 and continuing through November 5, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Broward, Glades, Hendry, and Martin in the State of Florida may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 5, 1999 and for economic injury the termination date is August 6, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31834 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License # 06/06–0286]

Sunwestern Ventures, Ltd.; Notice of License Surrender

Notice is hereby given that *Sunwestern Ventures, Ltd. (''Sunwestern''), 12221 Merit Drive, Suite 1300, Dallas, Texas 75251* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). *Sunwestern* was licensed by the Small Business Administration on *October 22, 1984.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on *October 31, 1998,* and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–31836 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2922]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three (23) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 28, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M