

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55594; File No. SR-NYSE-2005-48)

April 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendments No. 1, 2, 3, and 4 Thereto to Proposed Rule Change to Amend Rule 619 Pertaining to Subpoenas for the Production of Documents and Appearances of Witnesses

On July 13, 2005, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NYSE Rule 619, pertaining to subpoenas for the production of documents and appearance of witnesses. The proposed rule change was published for comment in the Federal Register on September 26, 2005,³ and the Commission received no comments on the proposal. On April 18, 2006, November 2, 2006, December 22, 2006, and February 8, 2007, the NYSE filed Amendments No. 1, 2, 3, and 4, respectively, to revise the rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52468 (Sept. 19, 2005), 70 FR 56201 (Sept. 26, 2005).

⁴ Amendment No. 1 clarified that only the arbitrator(s) may issue subpoenas and delineated the manner in which a party may request the issuance of a subpoena. Amendment No. 2 established a time frame for the parties to make and respond to objections to the requested subpoena and clarified that the arbitrator(s) may not rule on such a request until this time period has elapsed. Amendment No. 3 made technical changes to the rule and clarified that the arbitrator(s) must receive copies of any objections to the issuance of a subpoena. Amendment No. 4 clarified that a party requesting a subpoena may not serve the request or the draft subpoena on a non-party.

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

NYSE is proposing to revise Rule 619, which pertains to subpoenas for the production of documents and the appearance of witnesses. Below is the text of the proposed rule change. Proposed new language is underlined and proposed deletions are in brackets.

* * * * *

(a) to (e) no change

(f) Subpoenas

(1) The arbitrator(s) [and any counsel of record to the proceedings] may issue subpoenas for the production of documents or the appearance of witnesses [shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.] The party who requests a subpoena must make a written request asking the arbitrator(s) to issue a subpoena. The request, along with the requested draft subpoena must be served directly on each other party in a manner that is reasonably expected to cause the request and the requested subpoena to be delivered to all parties on the same day. The requesting party may not serve the request or the requested draft subpoena on a non-party. The request and the requested subpoena must also be filed with the Director of Arbitration, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties. The parties shall produce witnesses and present proof at the hearing whenever possible without using subpoenas.

(2) In the event a party receiving such a request objects to the scope or propriety of the subpoena, that party shall, within 10 days of service of the request, file with the Director of Arbitration, with copies to all other parties, written objections, including additional copies for each arbitrator. The party seeking the subpoena may respond thereto within five days of receipt of the objection. The arbitrator(s) appointed shall rule promptly on the issuance and scope of the subpoena after the time period for objections and replies thereto has elapsed.

(3) If the arbitrator(s) issue a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties, and, if applicable, on any non-party receiving the subpoena.

(4) Any party that receives documents in response to a subpoena served upon a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents shall be responsible for the reasonable costs associated with the production of the copies, unless the panel determines otherwise.

(g) no change

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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.

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

1. Purpose

Proposal

In the initial rule filing, the Exchange proposed to revise NYSE Rule 619 to provide for a 10-day notice period requirement before a party issues a subpoena to a non-party for pre-hearing discovery. Under the proposed rule change only the arbitrator(s) may issue subpoenas for the production of documents and the appearance of witnesses. In addition, the arbitrator(s), and not the courts, would rule on discovery disputes concerning the issuance of subpoenas. The party who requests a subpoena would make a written request asking the arbitrator(s) to issue a subpoena and would send a copy of the request and the requested draft subpoena to the Director of Arbitration, each arbitrator, and all parties to the arbitration in a manner reasonably expected to result in delivery to everyone on the same day. The requesting party may not serve the request or the requested draft subpoena on any non-party.

If a party has an objection to the propriety or scope of the subpoena, that party would be required to file objections in writing with the Director of Arbitration and send copies to all other parties, including each arbitrator, within 10 days of service of the request and draft subpoena. The party requesting the subpoena could file a reply to the objection within five days of receipt of the objection. The arbitrator(s) would determine the propriety and scope of the requested subpoena after the time period for filing objections or replies had elapsed. If a subpoena is issued by the arbitrator(s), the party

that requested the subpoena would be required to serve the subpoena at the same time and in the same manner on all parties, and, if applicable, on any non-party receiving the subpoena.

Additionally, the proposed rule change provides that any party that receives documents in response to a subpoena served upon a non-party must provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of those documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents is responsible for the reasonable costs associated with the production of the copies, unless the panel determines otherwise.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b)(5)⁵ of the Act in that the rule change promotes just and equitable principles of trade by ensuring that members, 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.

⁵ 15 U.S.C. 78f(b)(5).

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

The Commission published the proposed amendments to Rule 619 (SR-NYSE-2005-48) in the Federal Register on September 26, 2005. The Commission received no comments in response to the proposal.

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-48 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-2005-48. 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-2005-48 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30–3(a)(12).