

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52958; File No. SR-NYSE-2005-73)

December 15, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Rule 600, Relating to Arbitration

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on October 20, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The proposed rule change consists of the rescission of Exchange Rule 600(g), a pilot rule relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitrations.

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,

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

On July 1, 2002, the Exchange suspended the appointment of arbitrators for cases pending in California as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the “California Standards”) to Exchange arbitrations and arbitrators. The Exchange proposed Rule 600(g) in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.⁴ Under Rule 600(g), the Exchange implemented a pilot rule whereby parties to an arbitration could in certain circumstances request that a hearing be held outside California or waive application of the California Standards and hold the hearing in California. The Exchange and NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) became involved in a number of legal actions challenging the California Standards. On March 1, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in Credit Suisse First Boston Corp. v. Grunwald⁵ in which it held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. On May 23, 2005, the Supreme Court of California issued a decision in Jevne v. The Superior Court of Los Angeles County⁶ in which it also

⁴ See Exchange Act Release No. 46816 (November 12, 2002); 67 FR 69793 (November 19, 2002) (SR-NYSE-2002-56).

⁵ 400 F.3d 1119 (9th Cir. 2005).

⁶ S121532 (35 Cal. 4th 935) (CA Sup. Ct. May 23, 2005).

held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. Accordingly, the Exchange believes that it can once again appoint arbitrators and hold hearings in California without requiring a waiver of the California Standards.

The proposed rule change is intended to rescind Rule 600(g), which expired on September 30, 2005, as it is no longer necessary, in light of the court decisions referenced above.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)⁷ of the Act in general and Section 6(b)(5) of the Act⁸ in particular 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 NYSE 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 NYSE has neither solicited nor received written comments on the proposed rule change.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

The Commission has determined to approve the proposed rule change on an accelerated basis, thereby permitting the Exchange to rescind Rule 600(g) promptly.⁹ The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)¹⁰ of the Act in general and Section 6(b)(5) of the Act¹¹ in particular. Specifically, the Commission believes that permitting the Exchange to rescind Rule 600(g) will alleviate any confusion by California claimants as to whether the California Standards are applicable to their claims. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Although California claimants are no longer required to waive the California Standards, Rule 600(g) might lead California claimants to believe that the California Standards conflict with the NASD Code of Arbitration. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5)¹² and 19(b)(2)¹³ of the Act to approve the proposed rule change on an accelerated basis.

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:

⁹ The Exchange requested accelerated approval of the proposed rule change. Conversation between Daniel Beyda, Chief Administrative Officer of NYSE Arbitration, NYSE, and Elizabeth MacDonald, Special Counsel, Division of Market Regulation, on December 15, 2005.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

- 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-2005-73 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-73. 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-2005-73 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. **CONCLUSION**

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-NYSE-2005-73) be, and hereby is, approved.

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

Jonathan G. Katz
Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).