

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53599; File No. SR-NYSE-2005-18)

April 4, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto to Amend NYSE Rule 619 to Clarify That Failure to Appear or Produce Documents in Arbitration May Be Deemed Conduct Inconsistent with Just and Equitable Principles of Trade

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 February 17, 2005, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 27, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 rule change would add a new paragraph (h) to NYSE Rule 619 to clarify that the failure of a member, member organization, allied member, approved

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, which replaced the original filing, the Exchange clarified that Rule 619 also applies to a “person otherwise subject to the jurisdiction of the Exchange.”

<sup>4</sup> Amendment No. 2, which replaced the first amended rule filing, conformed the proposed rule to reflect the list of persons subject to disciplinary action under NYSE Rule 476.

person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange (each, a “responsible party”) to appear or to produce any document in their possession or control, as directed pursuant to provisions of the NYSE Arbitration Rules, may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6).

Below is the text of the proposed rule change. Proposed new language is underlined.

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**General Provision Governing Subpoenas, Production of Documents, etc.**

**Rule 619. (a) through (g) No Change.**

(h) It may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of Rule 476(a)(6) for a member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

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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 Exchange 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 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 proposed rule change would add a new paragraph (h) to NYSE Rule 619 (“General Provision Governing Subpoenas, Production of Documents, etc.”) to clarify that the failure of a responsible party to appear or to produce any document in its possession or control, as directed pursuant to provisions of the NYSE Arbitration Rules, may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6).

Background

NYSE Rule 619 provides that the parties to an arbitration proceeding shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information in order to expedite the arbitration process. Rule 619 also sets forth specific procedures and timetables with respect to the exchange of documents and information.<sup>5</sup>

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<sup>5</sup> For example, Rule 619(b) requires, in part, that:

“(1) Any party may serve a written request for information or documents (“information request”) upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service.

Arbitrators may, in the decision rendered by the panel, refer to the NYSE Enforcement Division a failure to cooperate in the voluntary exchange of documents and information by a responsible party.

#### Proposal

The Exchange is aware of allegations that member organizations have not fulfilled their discovery obligations as prescribed by NYSE Arbitration Rules. In order to address such situations more effectively, and to reinforce adequately the quasi-judicial functions of the arbitration process, the NYSE is proposing to amend Rule 619 to make clear that it may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6) for a responsible party to fail to appear or fail to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

NYSE Rule 476 allows disciplinary sanctions to be imposed upon a responsible party who is adjudged guilty of certain enumerated offenses, including “conduct or proceeding inconsistent with just and equitable principles of trade.” By explicitly providing that the failure to appear or to produce documents in one’s possession or control may be deemed conduct or proceeding inconsistent with just and equitable principles of trade, the proposed amendment would provide the Exchange with a clear mechanism to pursue disciplinary action pursuant to NYSE Rule 476 in response to such conduct.

The specific authority to bring a disciplinary action under NYSE Rule 476(a)(6) should improve the efficacy of the arbitration process by facilitating the Exchange’s ability

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Any objection to an information request shall be served by the objecting party on all parties.

(3) Any response to objections to an information request shall be served on all parties within ten (10) calendar days of receipt to the objection.”

to ensure more fully and forcefully the cooperation of a responsible party who is a party to an arbitration proceeding.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NYSE believes that the proposed amendments to Rule 619 are consistent with Section 6(b)(5) in that they should help to ensure that the public has a fair and expeditious forum for the resolution of disputes. The NYSE believes that a further statutory basis for this proposed rule change is also found in Section 6(b)(6) of the Act,<sup>7</sup> which requires that the rules of an exchange provide that members and persons associated with its members shall be appropriately disciplined for violation of the provisions of the Act, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The Exchange believes that the proposed amendments to Rule 619 are consistent with Section 6(b)(6) in that they would facilitate appropriate disciplinary action for violation of a rule of the Exchange.

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(6).

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change, as amended 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**

Written comments were neither solicited nor received.

**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 Exchange consents, the Commission will:

(A) by order approve such 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, as amended, 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-18 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-2005-18. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-18 and

should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).