

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54917; File No. SR-NYSE-2006-45)

December 11, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to Exchange Rule 638 Concerning Mediation

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on June 22, 2006, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III 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.

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

The Exchange is proposing amendments to Rule 638 concerning mediation. The amendments are, in part, housekeeping in nature as they remove references relating to an expired mediation pilot program and reposition certain provisions of the rule. In addition, the proposed amendments codify certain existing mediation procedures. The text of the proposed rule change is available on the NYSE’s Web site (www.nyse.com), at the NYSE’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Mediation is offered by the Exchange to parties, on a voluntary basis, both before and after an arbitration claim has been filed. A neutral, impartial individual, who serves as the mediator, facilitates discussion of the issues in an attempt to reach a settlement. The mediator does not render a decision.

In 1998, the Exchange adopted, on a pilot basis, Rule 638 to provide for mandatory mediation in all intra-industry disputes and voluntary mediation in all customer disputes for claims of \$500,000 or more. As an incentive for parties to use mediation, the pilot program provided for the Exchange to pay the mediator's fee, up to \$500 for a single mediation session of up to four hours. In December 2000, the pilot was amended to lower the threshold for customer disputes to \$250,000. The Exchange's experience with the pilot led to the conclusion that mediation is most successful when parties enter into it of their own accord. For this reason, the pilot was allowed to expire on January 31, 2003. Thereafter, the Exchange adopted the current mediation rules that provide for voluntary mediation pending arbitration, as well as prior to arbitration.

The proposal would remove references to the expired pilot program. The proposed amendments would also codify certain existing mediation procedures, including

that: (1) the mediator's fees and method of payment are subject to agreement of the parties and the mediator, and all such fees and costs incurred in mediation are the parties' responsibility; (2) an adjournment fee will be assessed if an arbitration hearing is adjourned for purposes of the parties pursuing mediation unless the fee is waived under Exchange Rule 617; (3) a mediator may not represent a party or act as an arbitrator in an arbitration relating to the matter arbitrated, nor be called to testify regarding the mediation in any proceeding; and (4) the mediation is confidential and no record is kept of the proceeding, and, except as may be required by law, the parties and mediator agree not to disclose the substance of the mediation without the prior written authorization of all parties to the mediation.

In addition, the proposed rule would clarify that any party may withdraw from mediation at any time prior to the execution of a settlement agreement upon written notification to all other parties, the mediator, and the Director of Arbitration. It also would clarify that parties may select a mediator on their own or request a list of potential mediators from the Exchange, and that, upon request of any party, the Director of Arbitration would send the parties a list of five potential mediators together with the mediators' biographical information described in Rule 608. At that time, any party to the mediation would be able to request additional names from the Director of Arbitration. The proposed rule also would provide that the parties shall advise the Exchange as to the name of the agreed-upon mediator. In addition, it would clarify that once the parties agree to mediate, the Exchange would facilitate the mediation, if requested, by contacting the mediator selected and by assisting in making necessary arrangements, as well as that

parties to mediation may use the Exchange meeting facilities in New York, when available, without charge.

2. Statutory Basis

The proposed changes are consistent with Section 6(b)(5)⁴ of the Act⁵ in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have fair and flexible alternatives 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.

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.

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

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78a.

- (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 an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-45 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-2006-45. 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, 100 F Street, NE, Washington, D.C. 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-2006-45 and should be submitted at or before [insert date 21 days from date of publication].

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).