

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56015; File No. SR-NYSE-2007-48)

July 5, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No.1 Thereto Relating to Proposed Amendments to Rule 600 to Provide Guidance Regarding New and Pending Arbitration Claims in Light of the Consolidation of NYSE Regulation into NASD DR

On May 23, 2007, pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change that was published for comment in the Federal Register on June 4, 2007.⁴ On June 21, 2007, the NYSE filed Amendment No. 1 to revise the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NYSE proposes to amend current Rule 600 and adopt a new Rule 600A. As part of the consolidation of the member firm regulation function of NYSE Regulation, Inc. (“NYSE Regulation”) with the National Association of Securities Dealers, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Release No. 34-55818 (May 25, 2007), 72 FR 30898 (June 4, 2007).

⁵ Amendment No. 1 replaced and superseded the original filing in its entirety.

(“NASD”), NYSE Regulation will cease to provide an arbitration program, and its existing arbitration department (“NYSE Arbitration”) will be consolidated with that of NASD Dispute Resolution, Inc. (“NASD DR”). The proposed amendments provide that the arbitration rules of the Exchange shall apply only to NYSE arbitration cases pending prior to the date which is the later of the date of approval of this proposed rule change or the date of the consolidation (the “Effective Date”), and that, thereafter, disputes between NYSE member organizations, associated persons, and/or their customers will be arbitrated under the NASD DR Codes of Arbitration Procedure. The text of the proposed rule is set forth below. Proposed new language is underlined.

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Rule 600 Arbitration

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Supplementary Material

Rules 600 through 639, and Rule 347, with the exception of Rule 600A, apply only to arbitrations filed prior to [insert later of effective date of the consolidation or approval of this proposed rule change] and are otherwise of no force or effect. Notwithstanding the foregoing, arbitrations filed with NYSE Arca on or prior to January 31, 2007 continue to be governed by the NYSE Arca Rule 12 in effect on or prior to January 31, 2007, and arbitrations filed with NYSE Arca Equities on or prior to January 31, 2007 continue to be governed by the NYSE Arca Equities Rule 12 in effect on or prior to January 31, 2007. On and after [insert date of the consolidation] all such arbitrations filed prior to [insert later of effective date of the consolidation or approval of this proposed rule change] shall, until concluded,

be administered by NASD Dispute Resolution, Inc. (“NASD DR”) pursuant to a Regulatory Services Agreement with the Exchange.

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Rule 600A

(a) Duty to Arbitrate. (i) Any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure; and, (ii) any dispute, claim or controversy between a customer or non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person, shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Such obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

(b) Referrals. The Exchange may receive, investigate and take disciplinary action with respect to any referral it receives from a NASD DR arbitrator of any matter which comes to the attention of such arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws.

(c) Failure to Arbitrate or to Pay an Arbitration Award. Any member organization or associated person who fails to submit to arbitration a matter required to be arbitrated pursuant to this Rule, or that fails to honor an arbitration award made pursuant to the NASD DR Codes of Arbitration Procedure, or made under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476.

(d) Other Actions. The submission of any matter to arbitration as provided for under this Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

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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, 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. 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 purpose of the proposed rule change is to provide guidance regarding both new and pending arbitration claims in light of the consolidation of the member firm regulation function of NYSE Regulation into NASD DR. NYSE Arbitration currently administers an arbitration program for NYSE Regulation, governed by NYSE Regulation

Rules 600 through 639. NYSE Arbitration also administers a program for NYSE Arca, Inc. (“NYSE Arca”) and NYSE Arca Equities, Inc. (“NYSE Arca Equities”), governed by what is referred to as “Rule 12.”⁶

As part of the consolidation of NYSE Regulation with NASD,⁷ NYSE Regulation will cease to administer an arbitration program, and its existing arbitration department will be consolidated with NASD DR. As a result, on and after the date of the consolidation, all arbitration claims filed prior to the Effective Date, and previously subject to NYSE Regulation rules and administration, will be administered by NASD DR pursuant to a Regulatory Services Agreement with the NYSE.

The rules governing the administration of any particular arbitration will depend on the date the case was filed. This will ensure that any person that filed an arbitration under a particular set of arbitration rules will continue to have the case administered pursuant to those rules through to the case’s conclusion. There are two categories of cases. First, NYSE arbitration cases filed before the Effective Date will continue to be governed by existing NYSE Regulation arbitration rules, as would pending NYSE Arca

⁶ NYSE Arca and NYSE Arca Equities have two separate rules that govern arbitrations, one for Equity Trading Permit (“ETP”) holders, and one for Option Trading Permit (“OTP”) holders and OTP firms; both rules are known as “Rule 12.” Although Rule 12 has subsequently been amended, for purposes of administering NYSE Arca and NYSE Arca Equities arbitrations filed on or prior to January 31, 2007, NYSE Arbitration follows Rule 12 as it was in effect on that date.

⁷ Additional information regarding the consolidation may be found in: SR-NASD-2007-23 (March 19, 2007) concerning proposed amendments to the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc.; and SR-NYSE-2007-22 (February 27, 2007) concerning proposed amendments to several NYSE rules which, among other matters, harmonize the rules with corresponding NASD regulatory requirements.

and NYSE Arca Equities cases filed on or after February 1, 2007.⁸ Second, those NYSE Arca and NYSE Arca Equities cases filed on or prior to January 31, 2007 are (and will continue to be) governed by Rule 12.

Proposed Exchange Rule 600A provides detailed guidance concerning claims involving member organizations and/or associated persons that are asserted on and after the Effective Date. First, any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure. Second, any dispute, claim or controversy between a customer or a non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Note that the obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

In almost all cases the change from NYSE to NASD DR arbitration rules should not result in material, substantive differences to persons participating in the arbitration process. However, one difference is the treatment of employment discrimination claims. NASD DR rules provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, will be eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast,

⁸ See Release No. 34-55142 (January 19, 2007), 72 FR 3898 (January 26, 2007) (SR-NYSEArca-2006-54) and Release No. 34-55141 (January 19, 2007), 72 FR 3897 (January 26, 2007)(SR-NYSEArca-2006-55).

Exchange Rule 600(f) and Exchange Rule 347(b) permit claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

Rule 347(a) provides that a controversy between a registered representative and a member organization “arising out of the employment or termination of employment of such registered representative” shall be arbitrated at the request of any party. These employment claims would continue to be covered by NASD DR Rule 13200(a), which requires the arbitration of disputes arising out of the “business activities” of a member or an associated person and is between or among members, members and associated persons, or associated persons.⁹ Accordingly, Rule 600 would be amended, as described below, to provide that Rule 347 would apply only to claims filed before the Effective Date.

Rule 600A will explicitly retain the Exchange’s enforcement authority related to arbitration. In appropriate cases, arbitrators refer to the Exchange potential violations of the Exchange’s Rules or the federal securities laws that come to their attention during and in connection with a proceeding. Rule 600A will specify that the Exchange will retain the ability to take action based on such referrals that may come from arbitrators in cases being arbitrated at NASD DR.

Rule 600A will also retain the substance of current Exchange Rule 637, regarding the obligation to honor arbitration awards. It will provide that any Exchange member organization, or associated person of any Exchange member organization, that fails to honor an award of arbitrators rendered under the NASD DR Codes of Arbitration

⁹ Telephone conversation among Jean Feeney, Vice President, NASD; Lourdes Gonzalez, Assistant Chief Counsel – Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (June 27, 2007).

Procedure, or under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476. It will also specify that failure to submit a matter to arbitration as required by Rule 600A will also subject the member organization to Exchange disciplinary action.

Rule 600A will also specify that the submission of any matter to arbitration as provided for under the Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

Finally, Supplementary Material added to existing Rule 600, and to become effective on the Effective Date, will specify that the current NYSE arbitration rules, Rules 600 through 639 and Rule 347, will thereafter apply only to arbitrations filed prior to the Effective Date and will be otherwise of no force or effect. The Supplementary Material will also specify that arbitrations filed with NYSE Arca or NYSE Arca Equities on or prior to January 31, 2007 will continue to be governed by those organizations' Rule 12. This will ensure that those who filed arbitrations under a particular set of arbitration rules will continue to have their cases administered pursuant to those same rules through to the cases' conclusion. The Supplementary Material will also note that on and after the date of the consolidation, all outstanding arbitrations filed prior to the Effective Date shall, until concluded, be administered by NASD DR pursuant to a Regulatory Services Agreement with the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5)¹⁰ of the Act, which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposed rule change will streamline the arbitration process and provide for a unified and more efficient arbitration forum with one set of arbitration rules and administrative procedures. This will allow resources to be devoted to maintaining and improving the NASD DR program, rather than splitting resources between two mainly duplicative programs. As a result of these improvements, the proposed rule change will better protect investors and the public interest.

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:

¹⁰ 15 U.S.C. 78f(b)(5).

- (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, as amended, is consistent with the Exchange 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-2007-48 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.

All submissions should refer to File number SR-NYSE-2007-48. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-48 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).