

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50939; File No. SR-NYSE-2004-031)

December 28, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rules 633, 634, and 635

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 21, 2004, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared by the Exchange. On October 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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

The proposed rule change consists of amendments to Rules 633, 634, and 635 concerning appointments of members of the Board of Arbitration, appointments to the panels of securities and non-securities arbitrators, and the appointment of the Director of Arbitration of the Exchange. The text of the proposed new rules, as amended, appears

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Karen Kupersmith, Director of Arbitration, New York Stock Exchange, to Catherine McGuire, Chief Counsel, Division of Market Regulation, dated October 29, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange amended a proposal to allow either its Chief Executive Officer or its Chief Regulatory Officer to appoint a Director of Arbitration, and it provided additional clarifications to the Statement of Purpose reflected in Item II.A.1, below.

below. Proposed deletions appear in [brackets]; proposed new language appears in italics.

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Rule 633

[Promptly after the annual election of the Exchange, the Chairman of the Board of Directors shall appoint, subject to the approval of the Board of Directors,] The Director of Arbitration shall appoint a Board of Arbitration to be composed of such number of present or former members, allied members and officers of member corporations of the Exchange who are not members of the Board of [Directors] Executives [as the Chairman of the Board of Directors shall deem necessary to serve at the pleasure of the Board of Directors or until the next annual election of the Exchange and their successors are appointed and take office].

Rule 634

The [Chairman of the Board of Directors] Director of Arbitration shall from time to time appoint two panels of arbitrators, [composed of persons who are residents of or have their places of business in the Metropolitan area of the City of New York]. [The] the first of such panels shall be composed of persons engaged in or retired from the securities business and the second of such panels shall be composed of persons not engaged in the securities business. [The Chairman of the Board of Directors may likewise appoint panels similar to the panels above described to serve outside the City of New York.]

Rule 635

The [Chairman of the Board,] Chief Regulatory Officer shall designate one of the officers or other employees of the Exchange as Director of Arbitration. The Director of Arbitration shall be charged with the duty of performing all ministerial duties in connection with matters submitted for arbitration pursuant to these 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 filings 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

NYSE Rule 633 currently provides that the Chairman of the NYSE Board appoints, subject to approval by the Board of Directors, a Board of Arbitration. Members of the Board of Arbitration are current or former members, allied members and/or officers of member corporations. Controversies between parties who are members, allied members, member firms or member corporations (*i.e.*, there are no non-members involved in the controversy) are submitted for arbitration to members of the Board of Arbitration. The Director of Arbitration is the person most familiar with the individuals being proposed as members of the Board of Arbitration. Involvement of the Chairman and the Board of Directors in the process does not serve a valid regulatory purpose, nor is their oversight of this appointment process otherwise required. Therefore, the proposed amendment would eliminate the involvement of both the Chairman and the Board, and allow the Director of Arbitration to appoint a Board of Arbitration. The proposed amendment also would delete the references in the rule to the annual election of the Exchange, as the review of the members of the Board of Arbitration will be an ongoing process, and the Board will no longer be involved. Moreover, the proposal would delete

the references to the Chairman's discretion as to the number of members of the Board of Arbitration, as the Chairman will no longer be involved. In addition, consistent with the recent corporate reorganization at the Exchange, the proposed amendment would delete the reference to the Board of Directors and instead would reference the Board of Executives with regard to the composition of the Board of Arbitration.

NYSE Rule 634 currently provides that the Chairman of the NYSE Board appoints two standing panels (rosters) of arbitrators, one roster of securities arbitrators and one roster of non-securities arbitrators. Arbitration panels for individual cases, pursuant to the rules, are typically composed of three arbitrators, two non-securities arbitrators and one securities arbitrator. The authority of the Chairman to appoint arbitrators to the standing panels has, pursuant to the Delegation of Authority, been delegated to the Vice President, Arbitration and Hearing Board.⁴ In practice, arbitration department management routinely appoints new individuals to the rosters of arbitrators, subject to the oversight of the Vice President. In that the Chairman has not played a role in this regard, the amendment would conform the rule to current practice, but would give the Director of Arbitration the direct authority to appoint individuals to the rosters of arbitrators. The proposed amendment also would delete the references in the current rule to the appointment of panels of arbitrators within any particular geographic region. This proposed change would conform the rule to current practice as the Exchange does not require that arbitrators who serve in a particular region either be residents of that region or have their principal place of business in that region.

⁴ See NYSE Constitution, Article IV, Section 14.

NYSE Rule 635 provides that the Chairman of the Board appoints the Director of Arbitration from the officers or employees of the Exchange. Pursuant to a recent restructuring at the Exchange, the Arbitration Department reports to the Chief Regulatory Officer (through the Vice President, Arbitration and Hearing Board).⁵ The proposed amendment, in recognition of that restructuring, provides that the Chief Regulatory Officer would designate the Director of Arbitration, which is subject to the approval of the Regulatory Oversight Committee.⁶

2. Statutory Basis

The proposed changes are consistent with Section 6(b)(5) of the Act,⁷ in that they promote 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 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.

⁵ See Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678.

⁶ See NYSE Constitution, Article IV, Section 12(a)(4).

⁷ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days 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 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 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-2004-031 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-031. The 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the New York Stock Exchange, Inc. 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-2004-031 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).