

engineers, quality control testing, and technical staff support in production). To reflect the costs associated with this upgrade, as well as general increases in the personnel costs associated with MFQS since 1996, Nasdaq proposes to increase the fee to \$325.

Finally, Nasdaq introduces a nominal \$20 fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS. In 2001, MFQS operations personnel performed over 2,000 name and symbol changes for listed funds. Nasdaq believes that it should be compensated for the personnel and system costs associated with making these changes. The fee would be charged for each request to change a name and/or symbol. Thus, if a fund requested a simultaneous change to its name and its symbol, the fee would still be \$20.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>9</sup> in general, and with section 15A(b)(5) of the Act,<sup>10</sup> in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation. The fees will be imposed directly on funds that benefit from the operation of the System.

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

Nasdaq does not believe that the proposed rule change will result in 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*

Nasdaq neither solicited nor received written comments.

## 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-101 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21428 Filed 8-21-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46372; File No. SR-NYSE-2002-30]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Renewal of Supplemental Procedures Relating to Arbitration Rules**

August 16, 2002.

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 August 2, 2002 the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities Exchange Commission (“SEC” or “Commission”) the proposed Renewal of Supplemental Procedures to the Arbitration Rules 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 Renewal of Supplemental Procedures from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of the Supplemental Procedures is fully described in Exhibit A of the Form 19b-4.

### **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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed 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 purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of Supplemental Procedures is based, in part, on rules approved by the Securities Industry Conference on Arbitration (“SICA”) that established a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them.

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

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

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

The Supplemental Procedures invite the parties to select their own arbitrators or agree on a procedure to select arbitrators. The Supplemental Procedures also suggest two ways the parties can select arbitrators instead of having the Exchange appoint them.

The Exchange started an informal pilot program in July 1998 in an attempt to gauge the parties' interest in alternative ways to select arbitrators. The Exchange's Board approved a two-year pilot program for Supplemental Procedures for selecting arbitrators in April 6, 2000. The Exchange filed the Supplemental Procedure with the SEC and they became effective on August 1, 2000.<sup>3</sup>

#### *NYSE Appoints Arbitrators Under Rules 601 and 607*

Under NYSE Rules 601 and 607, the Director of Arbitration appoints arbitrators to serve on each case. The Director generally delegates this task to a staff attorney. Each party has one peremptory challenge that allows the party to remove an arbitrator without specifying a reason. The parties have unlimited challenges for cause.

In 1998, the National Association of Securities Dealers, Inc. ("NASD") amended its rules to require that all arbitrators be appointed using a rotational list selection system. Their rule differs somewhat from the SICA Uniform Code and the Exchange's proposed Supplemental Procedures.

#### *Voluntary Supplemental Procedures for Selecting Arbitrators*

##### *(a) Party Agreement on Arbitrator Selection*

Under NYSE Rules, described above, the Director of Arbitration appoints the arbitrators, subject to the parties' challenges. The parties, however, may agree on an alternative way to select arbitrators. If all parties agree, they may select the arbitrators themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method.

##### *(b) Random List Selection*

Under Random List Selection, the Exchange provides the parties with a list of names of arbitrators randomly generated by computer. Except as described below, the list will have fifteen names. Ten of the arbitrators will be public arbitrators as defined by NYSE

Rule 607(a)(3), and five will be securities industry arbitrators as defined by NYSE Rule 607(a)(2), unless the public customer or non-member request a panel consisting of at least a majority from the securities industry. If, in the determination of the Exchange, the limited size of the arbitrator pool in a particular city makes a list of fifteen impractical, the lists may be limited to nine arbitrators, six public arbitrators and three securities industry arbitrators. Before the Exchange sends the lists of the parties, it will review the arbitrators' profiles for obvious conflicts or relationships with the parties or their counsel. The Exchange will replace those with conflicts by having the computer randomly select the name of a replacement arbitrator. The parties are also provided with the arbitrators' biographical and disclosure information as specified in NYSE Rules 608 (Notice of Selection of Arbitrators).

Within ten business days of receiving the lists, the parties may strike any or all of the names on the list. The parties are asked to number the remaining names in order of their preference (with "1" being the highest preference) and return the lists to the Exchange. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. The Exchange eliminates the names stricken and determines the ranking of the remaining names by adding the parties' rankings. The NYSE determines mutual preferences by adding the numbers assigned by each party to each arbitrator and selecting arbitrators with the lowest numbers first. The Exchange invites arbitrators to serve in order of the parties' combined preferences. In cases of a tie in the rankings, arbitrators will be invited to serve in alphabetical order.

If the Exchange cannot assemble a panel of arbitrators from the parties' lists, the Exchange will provide the parties with a second randomly generated list of names. The second list will have three names for each open seat on the panel. On the second list, each party has one non-renewable peremptory for each vacancy on the panel. Each party is to number the remaining names in order of its preference. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. If there remains more than one name per vacancy after the parties have exercised their strike, the Exchange will invite arbitrators to serve in order of the parties' combined preferences. In the

case of a tie, the Exchange will invite arbitrators to serve in alphabetical order.

The Exchange will notify the arbitrators of their selection and advise the parties of any disclosures under Rule 610.

##### *(c) Enhanced List Selection*

The second alternative is a hybrid of Exchange Rules and Random List Selection. Under Enhanced List Selection, the Exchange provides the parties with the names and profiles of nine arbitrators, six public arbitrators and three securities industry arbitrators, unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. The staff attorney selects these arbitrators based upon their qualifications and experience. The parties may exercise three peremptory challenges and number, in order of their preference (with "1" being the highest preference) the remaining names. If the Exchange removes any arbitrator from the list for cause before the end of the time to return the lists, the Exchange will provide a replacement name. The staff attorney then invites the arbitrators to serve based upon the parties' combined rankings. In case of a tie in the rankings, the Exchange will invite arbitrators to serve in alphabetical order.

If the Exchange cannot appoint a complete panel from the list, the staff attorney will appoint an arbitrator or arbitrators to complete the panel. Each party has one non-renewable peremptory challenge for each arbitrator the Exchange appoints. A party must use a peremptory challenge within ten business days of receiving notice of the appointment. The parties have unlimited challenges for cause.

#### **Voluntary Pilot Program**

The Exchange does not believe a rule requiring one of the alternative selection methods is appropriate at this time. Since July of 1998, the Exchange has offered parties the opportunity to select arbitrators on a voluntary basis similar to those detailed above. The Exchange has attempted to gauge the parties' interest in using alternatives to appoint arbitrators. After approximately 24 months of offering these alternatives, less than 15 percent of the parties in arbitration have chosen the alternatives. The Exchange has asked the parties to comment on the pilot, but has had limited responses. Some who responded preferred greater party control over the selection of arbitrators afforded by list selection. Others expressed a preference for the value added by the participation of Exchange staff attorneys in selecting arbitrators. To date, the results of the pilot program have been inconclusive.

<sup>3</sup> Exchange Act Release No. 43214 (August 28, 2002) 65 FR 53247 (September 1, 2000).

Accordingly, it is appropriate to renew the pilot program for two more years to allow the Exchange to collect additional information about the desirability of the Supplemental Procedures. The modest rate of acceptance leads the Exchange to recommend that the alternatives be continued on a voluntary basis.

#### 1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>4</sup> of the Act 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 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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate,<sup>5</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

The Commission also notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate it consistent with the protection of investors and the public interest. The Exchange requests a waiver of this 30-day period for the following reasons. First, the Supplemental Procedures are voluntary. Second, the Exchange notes that it based the Supplemental Procedures on the Uniform Code of

Arbitration developed by SICA. Finally, the Exchange notes that the Commission approved a similar rule change by the National Association of Securities Dealers, Inc. ("NASD") that provides for a list selection of arbitrators.<sup>8</sup> For the reasons discussed above, the Commission designates that the waiver of the 30-day period is consistent with the protection of investors and the public interest.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-30 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21430 Filed 8-21-02; 8:45 am]

**BILLING CODE 8010-01-P**

### SMALL BUSINESS ADMINISTRATION

#### [Declaration of Disaster #3427]

#### State of Alaska; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-21448 Filed 8-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

### SMALL BUSINESS ADMINISTRATION

#### [Declaration of Disaster #3426]

#### State of Arizona; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-21447 Filed 8-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

### SMALL BUSINESS ADMINISTRATION

#### [Declaration of Disaster #3425]

#### State of Iowa; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 19, 2002.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> The Exchange provided the Commission with the five-business day notice required by Rule 19b-4(f)(6) of the Act on August 2, 2002.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See Exchange Act Release No. 40555 (October 14, 1998) 63 FR 56670 (October 22, 1998).

<sup>9</sup> For the purposes only of accelerating the operating date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).