

interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to the requirements of 10 CFR 2.309.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery to mail to U.S. Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to the U.S. Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of any petitions should also be sent to Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 10, 2002, and supplemental letters dated March 12, 2003, April 10, 2003, March 5, 2004, and July 22, 2004, and (2) the Commission's letter to the licensee dated September 24, 2004.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

Dated at Rockville, Maryland, this 24th day of September 2004.

For the Nuclear Regulatory Commission.  
**Edwin M. Hackett**,  
*Director, Project Directorate II, Division of  
 Licensing Project Management, Office of  
 Nuclear Reactor Regulation.*  
 [FR Doc. 04-22047 Filed 9-30-04; 8:45 am]  
**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Notice

**DATE:** Week of October 4, 2004.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

#### ADDITIONAL MATTER TO BE CONSIDERED:

#### Week of October 4, 2004

*Thursday, October 7, 2004*

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative)

- d. Citizen's Awareness Network's (CAN) Motion to Dismiss the Yankee Rowe License Termination Proceeding or to Re-Notice It (Tentative)
- e. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Licensing Board's certification of its ruling on "need to know" during discovery (Tentative)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Dave Gamberoni, (301) 415-1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at [aks@nrc.gov](mailto:aks@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please

contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: September 28, 2004.

**R. Michelle Schroll**,

*Office of the Secretary.*

[FR Doc. 04-22199 Filed 9-29-04; 9:46 am]

**BILLING CODE 7590-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 4, 2004:

Closed meetings will be held on Monday, October 4, 2004 at 10 a.m., and Thursday, October 7, 2004 at 2:15 p.m. An open meeting will be held on Wednesday, October 6 at 10 a.m. in Room 6600.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meetings in closed session and that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Monday, October 4, 2004 will be:

Institution and settlement of injunctive action; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, October 6, 2004 will be:

The Commission will hear oral argument in an appeal by Michael Batterman, an investment adviser, and by Randall B. Batterman III from an initial decision of an administrative law judge. On motion for summary disposition, the law judge found that the Battersmans had been permanently

enjoined from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The law judge barred the Battersmans from association with any investment adviser.

Among the issues likely to be considered are:

1. Whether Federal Rule of Civil Procedure 36(b) provides that the district court injunction may not be used as a basis for this proceeding where the district court deemed that the Battersmans had admitted certain allegations in Requests for Admissions filed by the Commission based on their failure to deny properly those allegations;

2. Whether the doctrine of collateral estoppel precludes the Battersmans' challenge to the district court's findings;

3. Whether Randall Batterman was "a person associated with an investment adviser" within the meaning of the Advisers Act; and

4. Whether sanctions are appropriate in the public interest.

The subject matter of the closed meeting scheduled for Thursday, October 7, 2004 will be:

Formal orders of investigations;  
Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 29, 2004.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 04-22284 Filed 9-29-04; 4:00 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50449; File No. SR-NYSE-2004-50]

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

September 24, 2004.

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

23, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 consists of an extension, until March 31, 2005, of NYSE Rule 600(g), relating to arbitration.

#### 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 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

The proposed rule change is intended to extend until March 31, 2005, NYSE Rule 600(g), a pilot program that was most recently extended for a six-month period ending September 30, 2004.<sup>5</sup>

NYSE Rule 600(g) states:

This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the "California Standards"), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code. In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or

member organization with which she or he is associated may:

- Request the Director to appoint arbitrators and schedule a hearing outside California, or
- Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.

According to the NYSE, Rule 600(g) was adopted by the Exchange in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.<sup>6</sup> The Exchange states that on July 1, 2002, as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the "California Standards") to Exchange arbitrations and arbitrators, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange and NASD Dispute Resolution, Inc., sought a declaratory judgment that the California Standards are pre-empted by federal law. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.<sup>7</sup> A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.<sup>8</sup> The Exchange has

<sup>6</sup> Release No. 34-46816 (November 12, 2002); 67 FR 69793 (November 19, 2002) (SR-NYSE-2002-56).

<sup>7</sup> *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3485 (N.D. Cal.).

<sup>8</sup> In another district court decision, *Mayo v. Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1-50*, No. C-01-20336 JF, 2003 WL 1922963 (N.D. Cal. Apr. 22, 2003), Judge Jeremy Fogel held that application of the California Standards to the Exchange and other self-regulatory organizations ("SROs") is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act ("FAA"). The *Mayo* decision was not appealed. Since the decision in *Mayo*, the question of the applicability of the California Standards to SROs has been presented in another case in federal court in California, *Credit Suisse First Boston Corp. v. Grunwald*, No. C 02-2051 SBA (N.D. Cal. Mar. 31, 2003). The *Grunwald* court concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory

Continued

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

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

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

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

<sup>5</sup> Release No. 34-49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (SR-NYSE-2004-18).