

the Code of Arbitration Procedure was amended to read as follows:

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and \* \* \* (iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A) \* \* \*.

Some arbitrators who also serve as mediators were of the opinion that the rule change encompassed income in the form of mediation fees paid by industry parties such that these individuals would no longer qualify as public arbitrators under the new rule.

The NASD Dispute Resolution Board determined that the rule could be construed broadly enough to cover revenue derived from serving as a mediator, although this was clearly not the intent of the recent rule changes, and unanimously voted to issue a clarification in an IM that would be printed in the Code following Rule 10308.

The IM also would make clear that mediation services performed by mediators who are also arbitrators is not to be included in the definition of "professional work" for purposes of the 20% test either, so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

In considering this matter, the NASD Dispute Resolution Board also determined that parties may wish to know that an arbitrator on their list also serves as a mediator and may be familiar with the industry parties or their counsel. NASD staff will add this information to the disclosure forms of dual arbitrators/mediators.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that any potential conflict is best addressed by ensuring that arbitrators who are mediators disclose this fact in the arbitrator disclosure history. NASD will prepare materials to inform arbitrators of the need to make this disclosure.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

NASD Regulation does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## II. 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-007 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-NASD-2005-007. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-007 and should be submitted on or before February 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. E5-407 Filed 2-2-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51085; File No. SR-NYSE-2005-10]

### Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

January 27, 2005.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder, notice is hereby given that on January 18, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the Exchange. The Exchange 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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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

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

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 July 31, 2005, of the Voluntary Supplemental Procedures for Selecting Arbitrators ("Supplemental Procedures").

### **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. 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**

The proposed rule change is intended to extend until July 31, 2005 the Supplemental Procedures, which were approved by the Commission, most recently in SR-NYSE-2004-28,<sup>5</sup> for a six-month period ending January 31, 2005.

The Exchange currently has several methods by which arbitrators are assigned to cases, including the traditional method under NYSE Rule 607, pursuant to which Exchange staff appoints arbitrators to cases (the "Traditional Method"). On August 1, 2000, the Exchange implemented a two-year pilot program to allow parties, on a voluntary basis, to select arbitrators under two alternative methods (in addition to the Traditional Method).<sup>6</sup> Upon expiration of the two-year pilot, the Exchange renewed the pilot for an additional two years, which expired on July 31, 2004,<sup>7</sup> and then again for an additional six months through January 31, 2005.<sup>8</sup>

<sup>5</sup> See Exchange Act Release No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

<sup>6</sup> See Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR-NYSE-00-34).

<sup>7</sup> See Exchange Act Release No. 46372. See also Exchange Act Release No. 47929 (May 27, 2003), 68 FR 32791 (June 2, 2003) (SR-NYSE-2003-15).

<sup>8</sup> See Exchange Act Release No. 49915, *supra* note 5.

Under the Supplemental Procedures, the first alternative to the Traditional Method is the Random List Selection method by which the parties are provided randomly generated lists of public-classified and securities-classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. If vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

The second alternative to the Traditional Method is entitled Enhanced List Selection, in which six public-classified and three securities-classified arbitrators are selected, based on their qualifications and expertise, by Exchange staff. The lists are then sent to the parties. The parties have a limited number of strikes to use and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Finally, the Supplemental Procedures provide that the Exchange will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement as to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the Traditional Method is used.

The Exchange, pursuant to a separate filing,<sup>9</sup> is proposing amendments to NYSE Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. Pending Commission consideration of those amendments, the Exchange proposes to extend the pilot period for the Supplemental Procedures for an additional six months, until July 31, 2005.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>10</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.

<sup>9</sup> See SR-NYSE-2005-02, filed with the Commission on January 4, 2005.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

#### *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**

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, 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 Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>13</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> In this regard, the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

Commission notes that the proposal is the extension of a pilot program that has been in effect at the Exchange since August 2000. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. Nothing in the current notice should be interpreted as suggesting the Commission is predisposed to approving the proposed variation of the pilot program.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-10 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-2005-10. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-10 and should be submitted on or before March 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-405 Filed 2-2-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending January 14, 2005

The following Agreements Were Filed With the Department of Transportation Under the Provisions of 49 U.S.C. 412 and 414. Answers May Be Filed Within 21 Days After the Filing of the Application

*Docket Number:* OST-2005-20074.

*Date Filed:* January 10, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC3 0798 dated 21 December 2004

TC3 Areawide Resolutions r1-r8

PTC3 0799 dated 21 December 2004

TC3 Within South Asian

Subcontinent Resolutions r9-r18

PTC3 0800 dated 21 December 2004

TC3 Within South East Asia except

between Malaysia and Guam

Resolutions r19-r32

PTC3 0801 dated 21 December 2004

TC3 Within South East Asia between

Malaysia and Guam Resolutions

r33-r37

PTC3 0802 dated 21 December 2004

TC3 Within South West Pacific except

between French Polynesia and

American Samoa Resolutions r38-

r48

PTC3 0803 dated 21 December 2004

TC3 Within South West Pacific

between French Polynesia and

American Samoa Resolutions r49-

r52

PTC3 0804 dated 21 December 2004

TC3 South East Asia-South Asian

Subcontinent Resolutions r53-r60

PTC3 0805 dated 21 December 2004

TC3 South Asian Subcontinent-South

West Pacific Resolutions r61-r67

PTC3 0806 dated 21 December 2004

TC3 South East Asia-South West

Pacific except between Malaysia

and American Samoa Resolutions

r68-r74

PTC3 0807 dated 21 December 2004

TC3 South East Asia-South West

Pacific between Malaysia and

American Samoa Resolutions r75-

r80

PTC3 0808 dated 21 December 2004

TC3 Japan-Korea Resolutions r81-r92

PTC3 0809 dated 21 December 2004

TC3 Japan, Korea-South Asian

Subcontinent Resolutions r93-r106

PTC3 0810 dated 21 December 2004

TC3 Japan, Korea-South West Pacific

except between Korea (Rep. of) and

American Samoa Resolutions r107-

r161

PTC3 0811 dated 21 December 2004

TC3 Japan, Korea-South West Pacific

between Korea (Rep. of) and

American Samoa Resolutions r162-

r166

Minutes: PTC3 0814 dated 11 January

2005

Tables: PTC3 Fares 0316 dated 21

December 2004

TC3 Within South Asian

Subcontinent Fares Tables

PTC3 Fares 0317 dated 1 December

2004

TC3 Within South East Asia Fares

Tables

PTC3 Fares 0318 dated 21 December

2004

TC3 Within South West Pacific Fares

Tables

PTC3 Fares 0319 dated 21 December

2004

TC3 South East Asia-South Asian

Subcontinent Fares Tables

PTC3 Fares 0320 dated 21 December

2004

TC3 South Asian Subcontinent-South

West Pacific Fares Tables

PTC3 Fares 0321 dated 21 December

2004

TC3 South East Asia-South West

Pacific Fares Tables

PTC3 Fares 0322 dated 21 December

2004

TC3 Japan-Korea Fares Tables

PTC3 Fares 0323 dated 21 December

2004

TC3 Japan, Korea-South Asian

Subcontinent Fares Tables

PTC3 Fares 0324 dated 21 December

2004

TC3 Japan, Korea-South West Pacific

Fares Tables

Intended effective date: 1 April 2005

*Docket Number:* OST-2005-20101.

*Date Filed:* January 13, 2005.

*Parties:* Members of the International

Air Transport Association.

*Subject:*

PTC23 ME-TC3 0224 dated 14 January

2005

Mail Vote 429—Resolution 010e Special Passenger Amending Resolution

<sup>15</sup> 17 CFR 200.30-3(a)(12).