

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-BSE-2004-58 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-BSE-2004-58. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 BSE. 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-BSE-2004-58 and should be submitted on or before April 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51395; File No. SR-NYSE-2005-14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto of the New York Stock Exchange, Inc. Relating to Arbitration

March 18, 2005.

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 February 7, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed amendment to its arbitration rules as described in Items I and II below, which Items have been prepared by the Exchange. On March 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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 September 30, 2005, of Exchange 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 III below and is set forth in Sections A, B and C below.

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 September 30, 2005, Exchange Rule 600(g), a pilot program that was most recently extended for a

six-month period ending March 31, 2005.³

Exchange 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, Exchange 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.⁴ 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 preempted by federal law. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.⁵ A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.⁶ The Exchange has

³ See Securities Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (SR-NYSE-2004-50).

⁴ See Securities Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (SR-NYSE-2002-56).

⁵ *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3485 (N.D. Cal.).

⁶ The appeal from Judge Conti's decision in *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California* is

Continued

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option provided by Exchange Rule 600(g).

2. Statutory Basis

The Exchange states that the proposed change is consistent with Section 6(b)(5) of the Act⁷ 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.

currently stayed. 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 District Court in *Grunwald* concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory definition of "neutral arbitrators." On appeal, the Ninth Circuit disagreed that SRO-appointed arbitrators did not fall within the statutory definition of "neutral arbitrators" but held that the California Standards are preempted by the Act. See *Credit Suisse First Boston Corp. v. Grunwald*, No. 03-15695 (9th Cir. Mar. 1, 2005). NASD Dispute Resolution and the Exchange also submitted an *amicus* brief in *Jevne v. Superior Court*, 6 Cal. Rptr. 3d 542, 113 Cal. App. 4th 486 (2d Dist. 2003), in which the California Court of Appeal, Second District held that the Judicial Council acted within its authority in drafting the California Standards, that the California Standards are not preempted by the FAA, but that they are preempted by the Act. On March 17, 2004, the California Supreme Court granted review in *Jevne*. NASD Dispute Resolution and the Exchange were allowed to intervene on appeal before the California Supreme Court. The *Jevne* appeal has been fully briefed and was argued before the California Supreme Court on March 8, 2005.

⁷ 15 U.S.C. 78f(b)(5).

III. 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. 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-2005-14 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-2005-14. 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, 450 Fifth Street, NW., Washington, DC 20549-0609. 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-2005-14 and should be submitted on or before April 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations

thereunder, applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ 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.

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. Granting accelerated approval here will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. The NYSE adopted the pilot program under Rule 600(g) in response to the purported imposition of the California Standards on Exchange arbitrations and arbitrators. The pilot rule is currently extended until March 31, 2005, and must be extended in order to continue to provide the waiver option until a final judicial determination is reached. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the current extension of the pilot program under Exchange Rule 600(g) expires on March 31, 2005. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,¹¹ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2005-14), as amended, is hereby approved on an accelerated basis, and Exchange Rule 600(g) is extended until September 30, 2005.

⁸ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1293 Filed 3-23-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51392; File No. SR-PCX-2004-65]

Self-Regulatory Organizations; Notice of Filing and Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to the Deletion of Obsolete or Unnecessary Rules

March 17, 2005.

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 July 9, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On March 10, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 Exchange proposes to delete certain of its rules, or portions thereof,

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal.

⁴ In Amendment No. 2, PCX deleted the proposed changes to PCX Rule 6.68(a), which would have required an OTP Holder or OTP Firm to write its name or badge number on the trade ticket, since the necessary changes were made to PCX Rule 6.68(a) on January 7, 2005. See Securities Exchange Act Release No. 50998 (January 7, 2005), 70 FR 2443 (January 13, 2005)(approving File No. SR-PCX-2004-122). In SR-PCX-2004-122, PCX amended its rules relating to the systematization of orders in connection with the requirement to design and implement a consolidated options audit trail system, which included PCX Rule 6.68(a). PCX represents that the information in PCX Rule 6.68(a) is the same information required in PCX Options Floor Procedure Advice D-10. Amendment No. 2 also deleted language in the filing related to PCX Rule 6.68(a). In addition, Amendment No. 2 corrected a typographical error in the proposed rule text.

which have been determined by the Exchange to be obsolete or unnecessary. The text of the proposed rule change, as amended, is set forth below.

Proposed deletions are in brackets.

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Rule 4

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Exemptions

Rule 4.7 An OTP Holder or OTP Firm shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions:

(a) Any Floor Broker, Market Maker in listed options, or Lead Market Maker in listed options, registered with the Exchange in any such capacity, who is exempt from the minimum net capital requirements prescribed by Rule 4.1.

[An OTP Holder or OTP Firm qualifying for an exemption from the regular filing requirements pursuant to this Paragraph shall file with the Exchange for each calendar quarter a balance sheet and income statement in such form as prescribed by the Exchange. Such balance sheet and income statement shall be due by the fifteenth calendar day following the end of each calendar quarter in which the exemption provided in this Paragraph is applicable.]

(b) Any OTP Holder or OTP Firm that is a member of another self-regulatory organization, which has been designated the examining authority for such OTP Holder or OTP Firm by the Securities and Exchange Commission.

[An OTP Holder or OTP Firm qualifying for an exemption pursuant to this Paragraph shall file with the Exchange a copy of Notice and Part II of SEC Form X-17A-5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a-11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other Designated Examining Authority or by any applicable rule.]

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Rule 11

Business Conduct

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Joint Accounts

Rule 11.12(a)—No change.

[(b) Reporting. No OTP Holder or OTP Firm, nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security through the facilities of the Exchange, unless such joint account is

reported to and not disapproved by the Exchange. Such reports, in form prescribed by the Exchange, shall be filed with the Exchange before any transaction is completed through the facilities of the Exchange for such joint account.

The Exchange shall require weekly reports, in form prescribed by the Exchange, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Exchange and with respect to every joint account which actively trades in any security on the Exchange in which any OTP Holder, OTP Firm or participant therein holds any interest or participation or of which such OTP Holder, OTP Firm or participant therein has knowledge by reason of transactions executed by or through such OTP Holder, OTP Firm or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an OTP Holder or OTP Firm is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such OTP Holder or OTP Firm need not comply with the reporting provisions hereof.]

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Options Floor Procedure Advices

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Orders

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[D-10

Subject: Imprinting the Name of OTP Holder or OTP Firm on Trade Tickets

Rule 6.66 requires an OTP Holder or OTP Firm to immediately give up the name of the clearing member through whom the transaction will be cleared and Rule 6.67 requires that orders be in a written form approved by the Exchange.

In order to reduce confusion and potential errors, the Exchange has ruled that OTP Holders or OTP Firms ordering trade tickets, other than Market Maker trade tickets, either from the Exchange or from other approved sources, shall cause to be imprinted or written thereon the name of the OTP Holder or OTP Firm that will be given up in transactions effected by the use of that ticket.]