

will facilitate the accurate clearance and settlement of transactions.

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

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission if it receives any written comments.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(4)⁴ thereunder because it effects a change in an existing service of NSCC that does not adversely affect the safeguarding of securities or funds in NSCC's control or for which NSCC is responsible and does not significantly affect NSCC's or its participants' respective rights or obligations. 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 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 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-NSCC-2005-10 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F

Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-NSCC-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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site (<http://www.nsc.com/legal/index.html>). 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-NSCC-2005-10 and should be submitted on or before October 17, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. E5-5172 Filed 9-23-05; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52468; File No. SR-NYSE-2005-48]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Provide for a 10-Day Notice Requirement Before a Party Issues a Subpoena to a Non-Party for Pre-Hearing Discovery

September 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4² thereunder,

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on July 13, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "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. 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 NYSE is proposing to amend Rule 619 ("General Provision Governing Subpoenas, Production of Documents, etc.") primarily to provide for a 10-day notice period requirement before a party issues a subpoena to a non-party for pre-hearing discovery. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 619: General Provision Governing Subpoenas, Production of Documents, etc.

- (a) to (e) no change.
(f) Subpoenas.

(1) The arbitrator(s) and any counsel of record to the proceedings [shall have the power of the subpoena process] *may issue subpoenas as provided by law.* [All parties shall be given a copy of the subpoena upon its issuance.] *The party who requests or issues a subpoena must send a copy of the request or subpoena to all parties and the entity receiving the subpoena in a manner that is reasonably expected to cause the request or subpoena to be delivered to all parties and the entity receiving the subpoena on the same day.* The parties shall produce witnesses and present [proofs to the fullest extent possible without resort to the subpoena process] *proof at the hearing whenever possible without using subpoenas.*

(2) *No subpoenas seeking discovery shall be issued to or served upon non-parties to an arbitration unless, at least 10 days prior to the issuance or service of the subpoena, the party seeking to issue or serve the subpoena sends notice of intention to serve the subpoena, together with a copy of the subpoena, to all parties to the arbitration.*

(3) *In the event a party receiving such a notice objects to the scope or propriety of the subpoena, that party shall, within the 10 days prior to the issuance or service of the subpoena, file with the Director of Arbitration, with copies to all other parties, written objections. The party seeking to issue or serve the*

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(4).

subpoena may respond thereto. The arbitrator(s) appointed shall rule promptly on the issuance and scope of the subpoena.

(4) In the event an objection to a subpoena is filed under paragraph (f)(3), the subpoena may only be issued or served prior to the arbitrator's(s') ruling if the party seeking to issue or serve the subpoena advises the subpoenaed party of the existence of the objection at the time the subpoena is served, and instructs the subpoenaed party that it should preserve the subpoenaed documents, but not deliver them until a ruling is made by the arbitrator(s).

(5) Rule 619(f)(2) and (3) do not apply to subpoenas addressed to parties or non-parties to appear at a hearing before the arbitrator(s).

(6) The arbitrator(s) shall have the power to quash or limit the scope of any subpoena.

(g) No change.

* * * * *

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 changes. 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

Parties in arbitration often seek the production of documents from third parties as part of pre-hearing discovery. Exchange Rule 619 sets forth procedures for the issuance of subpoenas and for the production of documents. The rule provides that arbitrators and attorneys for the parties have subpoena powers as provided by law, and that all parties are to be given copies of subpoenas when issued.

Under the current procedures, the opposing attorney may not receive notice of the subpoena until after it has been served on a non-party. In such situations, non-parties may produce documents that are the subject of dispute as to whether they should be produced at all. This has led to court action to have subpoenas quashed, which adds expense and delay to the arbitration process. Under the proposed

amendments, the arbitrators, rather the courts, would rule on these discovery disputes.

Under the proposed rule, the party who requests or issues a subpoena must send a copy of the request or subpoena to all parties to the arbitration, and to non-parties, if applicable, in a manner reasonably expected to result in delivery to everyone on the same day.

As amended, the rule provides that subpoenas can be issued to non-parties only after all parties have ten days advance notice and the opportunity to file objections. If a party has an objection to the propriety or scope of the subpoena, that party may file objections in writing with the Director of Arbitration and send copies to all other parties within the ten-day period prior to the issuance or service of the subpoena. The party requesting the subpoena may file a reply to objections. The arbitrator(s) shall determine the propriety and scope of the requested subpoena(s).

Additionally, as amended, the rule provides that non-parties must be advised that documents subpoenaed are to be preserved but not delivered pending any determination that may be required by the arbitrator(s). Furthermore, the proposed rule does not apply to subpoenas addressed to parties or non-parties to appear at a hearing before the arbitrator(s).³ The proposed rule also provides that the arbitrator(s) may quash or limit the scope of subpoena(s).

The proposed amendments are based on the Securities Industry Conference on Arbitration's Uniform Code of Arbitration.

2. Statutory Basis

The proposed changes are consistent with Section 6(b)(5)⁴ of the Act 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.

³ Telephone conversation between Karen Kupersmith, Director of Arbitration, NYSE, and Michael Hershaff, Attorney Adviser, Division of Market Regulation, Commission (Sept. 15, 2005).

⁴ 15 U.S.C. 78f(b)(5).

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 comments on the proposed rule change.

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 the 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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2005-48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-48. 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 will also 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-2005-48 and should be submitted on or before October 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. E5-5173 Filed 9-23-05; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 06/76-0330]

SunTx Fulcrum Fund II—SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that SunTx Fulcrum Fund II—SBIC, L.P., 14001 N. Dallas Parkway, Suite 111, Dallas, Texas 75240, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). SunTx Fulcrum Fund II—SBIC, L.P. proposes to invest in Interface Security Systems Holdings, Inc. ("Interface"). The financing will provide the funding for the future acquisitions.

The financing is brought within the purview of Sec. 107.730(a) and Section 107.730(d) of the Regulations because SunTx Fulcrum Fund, L.P. and SunTx Fulcrum Dutch Investors, L.P., Associates of SunTx Fulcrum Fund II—SBIC, L.P., owns 93.87% of the existing and outstanding ownership of Interface.

Therefore, this transaction is considered financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 19, 2005.

Jaime Guzman-Fournier,
Associate Administrator For Investment.
[FR Doc. 05-19101 Filed 9-23-05; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Photographic Film, Paper, Plate, and Chemical Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Photographic Film, Paper, Plate, and Chemical Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service disabled veteran-owned small businesses or SBA's 8(a) Business Development Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at 481-1788; or by e-mail at edith.butler@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR

121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

As implemented in SBA's regulations at 13 CFE 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Photographic Film, Paper, Plate, and Chemical Manufacturing, North American Industry Classification System (NAICS) 325992. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(A)(17).

Dated: September 15, 2005.

Karen C. Hontz,
Associate Administrator for Government Contracting.
[FR Doc. 05-19100 Filed 9-23-05; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Household Refrigerator Equipment.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Household Refrigerator Equipment. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service disabled veteran-owned small businesses or SBA's 8(a) Business Development Program. The purpose of

⁵ 17 CFR 200.30-3(a)(12).