While many DPMs utilize CBOE's AutoQuote system, some DPMs have opted to use non-CBOE proprietary automated quotation updating systems. CBOE has allowed members to employ proprietary autoquote systems provided such systems are approved by the Exchange's appropriate Floor Procedure Committee. The failure of a proprietary autoquote system could result in CBOE's inability to open for an entire group of listed option classes for a brief or sometimes lengthy time period. Thus, CBOE has strongly encouraged, and now seeks to require, that members have CBOE's AutoQuote system ready as a back-up should a proprietary system fail. CBOE believes failure to comply with the proposed requirement should be subject to sanction under the Exchange's Plan on a trading station by trading station basis.

Determining a violation would be objective in nature and very suitable for inclusion in the Plan. Still, because a DPM could be in violation for one minute or four hours, violations can vary greatly in terms of the impact on CBOE's marketplace. Therefore, the Exchange believes it is appropriate to allow for summary fines under the plan that could range from $100 to $2500 for first time violations and from $100 to $5000 (the minimum and maximum allowable under the Plan) for a limited number of subsequent violations. For egregious violations, including those that severely impact the trading of option classes on CBOE for an extended period of time, the Modified Trading System Appointments Committee (the committee charged with DPM supervision) would have the discretion to refer the matter to the CBOE Business Conduct Committee instead of handling the violation under the Plan. Further, in no event would more than three violations by the same DPM in any twelve-month period be handled under the Plan. CBOE floor officials would be responsible for issuing summary fines under the proposed rule. Lastly, because different trading stations operated by the same DPM organization can operate and maintain autoquote systems differently, the Exchange believes it is appropriate for the summary fines to be handled on a trading station by trading station basis.

2. Statutory Basis

Because the proposed rule change will refine and enhance the Exchange's Minor Rule Violation Plan to make it more efficient and effective, the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(5)[5] and 6(b)(7)[6] in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

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

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 and Amendment No. 1 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 and Amendment No. 1 that are filed with the Commission, and all written communications relating to the proposed rule change and Amendment No. 1 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 Exchange. All submissions should refer to File No. SR–CBOE–2002–30 and should be submitted by October 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25163 Filed 10–2–02; 8:45 am]

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[4] 15 U.S.C. 78(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78(f)(b)(7).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46562; File No. SR–NASD–2002–126]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Require Industry Parties in Arbitration To Waive Application of Contested California Arbitrator Disclosure Standards, Upon the Request of Customers and Associated Persons With Claims of Statutory Employment Discrimination, for a Six-Month Pilot Period

September 26, 2002.

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 September 23, 2002, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

NASD is proposing to amend IM–10100 to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of customers that have waived the application of these standards (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination that have waived the application of these standards), for a six-month pilot period. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

IM–10100. Failure To Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a)–(e) No change.

(f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (the ''California Standards''), if all the parties in the case who are customers have waived application of the California Standards in that case; or

(g) fail to waive the California Standards, if all the parties in the case who are associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change.[3] The text of these statements may be examined at the places specified in Item III below. NASD 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

NASD's foremost interest is to serve investors who bring their claims to the NASD by providing a fair, efficient arbitration forum at a modest cost. To this end, NASD spent several months trying to resolve the issues created by the recent California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (the ''California Standards''), which are described in more detail below. Only as a last resort, when it became clear that NASD could not resolve these issues consistent with providing a fair and efficient national forum, did NASD, along with the New York Stock Exchange (''NYSE''), conclude that NASD should cease appointing arbitrators in California and institute litigation.[4]

NASD and NYSE have filed a joint complaint in federal court for declaratory relief[5] in which they contend the California Standards cannot lawfully be applied to NASD and NYSE (both registered as self-regulatory organizations (''SROs'') with the SEC under the Act) and their arbitrators because the California Standards are preempted by federal law and are inapplicable to SROs under state law.[6] Pursuant to the parties' agreement, the court directed expedited proceedings.

While waiting for the Court's guidance on this issue, NASD and NYSE announced that they were temporarily postponing the appointment of arbitrators for new arbitration cases in California until their concerns over the new rules governing the arbitration process in that state were addressed. Since appointments stopped on July 1, 2002, approximately five hundred NASD and NYSE California cases have been affected. In an effort to keep cases moving, NASD and NYSE have offered California parties several alternatives, enumerated below.

On September 5, 2002, the Chairmen of NASD and NYSE received a request from Harvey L. Pitt, Chairman of the SEC, to further expedite processing of arbitration claims involving California parties. In response, NASD Chairman Robert R. Glauber stated that NASD would work closely with SEC staff to develop interim steps to process California cases. Having done so, NASD now proposes implementation of a six-month pilot amendment to IM–10100 that will require all parties that are member firms or associated persons to waive the California Standards if all the parties in the case who are customers or associated persons with a statutory employment discrimination claim[7] have waived application of the California Standards in that case. Under such a waiver, the case would proceed in California under the existing NASD Code, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.

NASD will notify parties (and their representatives, if any) who currently are awaiting the appointment of arbitrators in California of the terms of this new rule upon its approval by the Commission, and will provide them with the waiver forms.

Background

On July 1, California introduced new rules governing the arbitration process in that state. The rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. The NASD and NYSE not-for-profit, highly regulated dispute resolution programs have in place appropriate conflict of interest rules.

The California Standards put extreme and unnecessary disclosure burdens on individuals who serve on NASD arbitration panels and already meet stringent disclosure rules. The extensive record-keeping requirements for arbitrators, coupled with potential liability for even inadvertent violations of the California Standards, led NASD to

[3] The discussion in this section represents the NASD's views on the situation in California, and does not in any way represent a Commission position on this issue.

[4] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf.*

[5] As noted above, NASD and NYSE filed a lawsuit on July 22, 2002, seeking a declaratory judgment that the Standards that went into effect in California on July 1, 2002 do not apply to arbitrations conducted by NASD or the NYSE as a matter of federal law. The suit has three legal bases: that securities regulation is part of a pervasive system of federal regulation and state efforts to regulate SRO-administered arbitration are impermissible; that California's rules are preempted by the Federal Arbitration Act, as interpreted by the United States Supreme Court; and that the California rules improperly expanded on the definition of neutral arbitrator as provided in California statutory law. The parties to the litigation have entered into a stipulation for the court to adjudicate the case on an expedited basis.

[6] On September 19, 2002, the SEC sought leave of the court to file a friend of the court (''amicus curiae'') brief in which it contended that the California Standards are preempted by federal law. Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* No. C 02 3486 SBA (N.D. Cal.). The brief is available on the SEC Web site at: *http://www.sec.gov/litigation/briefs/nasddispute.pdf.*

[7] The amendment will require members to waive the Standards not only at the request of customers that have waived, but also in industry cases in which the parties who are associated persons with claims of statutory employment discrimination have waived, since such claims already are subject to special procedures in arbitration (*see* NASD Rule 10201(b) and the NASD Rule 10210 Series).

conclude that, if NASD were required to implement the California rules, investors and other parties would be saddled with higher costs, a less efficient and streamlined process, and a much smaller arbitrator roster from which to select the panelists who will decide their cases. Under the California Standards, even inadvertent non-disclosure of immaterial relationships is a basis for removal of an arbitrator and vacatur of an award. The California Standards remove from the alternative dispute resolution administrator the power to decide contested challenges to arbitrators, instead vesting this authority unilaterally in any party to the arbitration. As currently drafted, the California Standards would allow a party unilaterally to challenge and remove one arbitrator after another, thus destroying any notion of arbitral finality and closure. Accordingly, both NASD and NYSE filed extensive comments when the rules were proposed in February 2002, followed by meetings between NASD and NYSE officials and Judicial Council and Legislative staff. Despite these efforts, the California Standards were promulgated without addressing the fundamental concerns expressed by NASD and the NYSE. As a result, both forums announced in July 2002 that they were postponing the appointment of arbitrators for new arbitration cases in California until this matter could be resolved.

Measures Previously Implemented

NASD has taken several steps to help investors deal with the delay in California cases. Specifically, NASD announced that it would provide venue changes for arbitration cases and absorb the extra administrative costs associated with the change of venue, use non-California arbitrators when appropriate, and waive its administrative fees for NASD-sponsored mediations. To accommodate cases being heard outside of California, NASD added Reno, Nevada as a new hearing location to the existing sites in Portland, Oregon; Seattle, Washington; Phoenix, Arizona; and Las Vegas, Nevada. On September 3, 2002, NASD further enhanced the venue selection for investors by announcing that cases would be moved outside of California at the request of an investor; member firm acquiescence is no longer required.

To educate parties about these measures, NASD posted on its Web site specific guidance announcing and elaborating on these steps. Importantly, NASD also advised that investors who believe they have disputes with their brokers should not delay in filing their cases with an SRO forum because of statutes of limitations. NASD also advised that NASD is still processing California cases as they are filed up to the point of sending out lists of arbitrators (or appointing arbitrators, in cases that had already passed the list selection stage). NASD announced that the 660 California cases that had already been paneled prior to July 1, 2002 would continue in the normal course.

Finally, to accommodate investors with exigent circumstances (*e.g.*, elderly investors or investors with infirmities), NASD has paneled cases at the request of the investor or the investor's representative in situations where both the investor and the broker/dealer have agreed in writing to waive the California standards.

Proposed Rule Change

In its ongoing efforts to accommodate California parties in its forum, NASD is taking additional steps to resume paneling of California cases while the litigation between California and the NASD and NYSE continues. The proposed rule will require industry parties to waive the California Standards in all cases in which all the parties in the case who are customers (or, in industry cases, who are associated persons with claims of statutory employment discrimination) agree to waive application of the Standards. Under such a waiver, the case would proceed in California under the existing NASD Code, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.

Starting immediately, NASD will resume issuing lists of proposed arbitrators in California cases from which the parties select their panels under the current Neutral List Selection System (NLSS). Once the proposed rule is effective, NASD will send letters to investors and associated persons with claims of statutory employment discrimination, giving them the option of waiving the California Standards and providing them with waiver forms. NASD is taking other steps to inform investors of how they can move their arbitration cases forward under this situation. NASD staff members have spoken with numerous investors and other parties, and their representatives, and will continue to do so, as well as sending written material and posting information to its Web site.

At the same time, NASD will notify industry parties in all pending California cases that they must waive the California Standards where the investor agrees to a waiver (or associated person, in the circumstances described above). Industry parties in such cases will be required to execute waiver agreements; however, their failure to do so will not stop the cases from moving forward [8] and the failure to sign as required by the proposed rule change will be referred for disciplinary action.

Where all parties waive the California Standards as provided in the proposed rule change, NASD will immediately commence the arbitrator appointment process using the NASD Code of Arbitration Procedure guidelines regarding arbitrator disclosure, and not the California Standards. This opportunity will apply to those cases where NASD is ready to appoint arbitrators based on lists already executed by the parties, and those cases where there is a vacancy in a previously appointed panel.

NASD requests that the rule change become effective on September 30, 2002, for a six-month pilot period.[9]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association'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 expediting the appointment of arbitrators under the proposed waiver, at the request of customers (and, in industry cases, associated persons with claims of statutory employment discrimination), will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

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

NASD 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.

[8] In these situations, the NASD will treat the industry parties as having waived the California standards.

[9] If the outcome of the lawsuit is that the California Standards do not apply to NASD arbitration, waivers would no longer be necessary. Cases in which arbitrators were appointed pursuant to waivers would continue to their conclusion. If the lawsuit has not concluded at the expiration of the six-month pilot period, NASD may request an extension.

[10] 15 U.S.C. 78*o*–3(b)(6).

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.

III. 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. 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 NASD. All submissions should refer to File No. SR–NASD–2002–126 and should be submitted by October 24, 2002.

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

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Section 15A of the Act.[11] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act, which requires that the rules be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[12] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from September 30, 2002 to March 30, 2003, during which time the Commission and NASD will monitor the status of the previously discussed litigation.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2002–126) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25104 Filed 10–2–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46560; File No. SR–NYSE–00–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Thereto by the New York Stock Exchange, Inc. To Amend Exchange Rules 36.30 and 104A.50

September 26, 2002.

I. Introduction

On July 3, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rules 36.30 and 104A.50. The Exchange submitted Amendment No. 1 to the proposed rule change on May 21, 2001.[3] The proposed rule change was published for public comment in the **Federal Register** on June 16, 2001.[4] The Exchange submitted Amendment Nos. 2 and 3 to the proposed rule change on February 6, 2002 [5] and September 20, 2002,[6] respectively. The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended by Amendments Nos. 1, 2 and 3.[7] This order also issues notice of filing of, and grants accelerated approval to, Amendment Nos. 2 and 3 thereto.

II. Description of the Proposed Rule Change

NYSE Rule 36.30 governs the use of telephone lines at a specialist unit's post. The rule currently permits telephone lines from the post to the unit's off-floor offices and to the unit's clearing firm. The rule also permits specialists to have telephone lines to the floor of an options or futures exchange for the purpose of entering hedging orders on the floors of those exchanges.

The Exchange proposes to amend NYSE Rule 36.30 to more clearly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety (''Amendment No. 1''). Amendment No. 1 withdraws the proposed amendments to NYSE Rule 36.20 in the original filing that would have permitted certain off-floor communications by members on the floor. The NYSE has stated that these amendments will be subject to a separate filing. Amendment No. 1 also amends proposed NYSE Rule 36.30A to clarify the manner in which Exchange specialists may communicate proprietary orders in foreign specialty stock from their post to off-floor broker-dealers. Finally, Amendment No. 1 amends proposed NYSE Rule 36.30C to include in the definition of foreign security depositary shares that represent a foreign company's publicly traded security.

[4] Securities Exchange Act Release No. 44368 (May 30, 2001), 66 FR 30494.

[5] See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 31, 2002 (''Amendment No. 2''). Amendment No. 2 amends proposed Commentary .30 to NYSE Rule 36 to: (i) Add language stating that specialists relying on the rule must have an objective of facilitating the maintenance of a fair and orderly market on the Exchange; (ii) delete proposed subsection A.3; (iii) define ''communication link;'' (iv) clarify that NYSE Rule 92, on trading ahead, would apply to specialists entering proprietary orders in foreign securities; and (v) clarify that specialists are prohibited from using the communication links to receive material nonpublic information, and that if such information is received, the specialist must contact his firm's compliance officer, who must determine whether the specialist is permitted to continue to trade the stock.

[6] See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 19, 2002 (''Amendment No. 3''). Amendment No. 3 deletes the phrase ''among other means'' from the definition of ''communication link'' in proposed NYSE Rule 36.30D.

[7] The Commission has requested from the Exchange an explanation of the surveillance procedures it intends to implement to ensure that specialists comply with the proposed rule, as amended. This approval order is contingent upon the submission of these surveillance procedures as well as the Commission's finding that such surveillance procedures are adequate.