''public offerings'' because the transactions, which were initiated pursuant to exceptions to the registration requirements, were registered with the Commission prior to closing the transactions.[6] Historically, for purposes of assessing the applicability of the shareholder approval rules, Nasdaq staff has interpreted ''public offering'' as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, Nasdaq staff does not consider a transaction to be a ''public offering'' for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described had limited distributions and, in some cases, the offerees were pre-determined by the issuer, Nasdaq believed that these transactions were not ''public offerings'' for purposes of the shareholder approval rules.

To help to ensure that all issuers understand how Nasdaq will determine whether a transaction is a ''public offering'' for purposes of the shareholder approval rules, Nasdaq has prepared the proposed Interpretative Material. Determinations as to whether a transaction is a ''public offering'' for purposes of these rules will be made based on the facts and circumstances surrounding each particular transaction. The proposed Interpretative Material identifies a number of factors that will be considered when determining whether an offering is a ''public offering,'' including the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution.

II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that the Association's rules 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.[8] The Commission believes the Interpretative Material is designed to educate issuers and other interested parties as to how Nasdaq defines a ''public offering'' in order to ensure that issuers are aware as to which transactions require shareholder approval under the NASD's rules, thus promoting just and equitable principles of trade and protecting investors and the public interest.

It Is Therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposal, SR–NASD–00–50, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29466 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[6] The Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43538; File No. SR–NYSE–00–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Arbitration Rules Regarding Pilot Program for Mediation and Administration Conferences

November 9, 2000.

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 29, 2000, 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, II, and III below, which Items have been prepared by the NYSE. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The purpose of extending and amending the pilot program for mediation is to continue to offer mediation as a way for parties to settle cases earlier with fewer costs. The administrative conference pilot, as extended and amended, will allow the arbitrators(s) to intervene early in the case to set deadlines and resolve preliminary issues. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

Rule 638 Mediation

(a) Mediation Pending Arbitration

(1) [(a)] A single mediation session of up to four hours will be conducted in all cases [not involving public customers] submitted for arbitration where the amount of the claim is [$500,000] *$250,000* or more.

(2) [(b)] The New York Stock Exchange will provide the parties with a mediator. The mediator's fee for the single mediation session shall be $500 and shall be paid by the New York Stock Exchange. If the parties select a mediator of their own choosing, from outside the list of proposed mediators, they shall be responsible for any difference in the mediator's fee. If the parties desire they can extend the mediation beyond the first session at their own expense.

(3) [(c)] Unless the parties agree on a mediator, the Director of Arbitration will send the parties a list of five proposed mediators together with the mediators's biographical information described in Rule 608. The parties shall have ten days to agree on a mediator from the list or chose their own mediator. If no agreement is reached, the Director of Arbitration will select a mediator from the list unless all the names on the list are objected to by the parties. In that instance, the Director of Arbitration will appoint a mediator from outside the list.

(4) [(d)] Unless otherwise agreed to by the parties, mediation shall not delay the arbitration.

(5) [(e)] The mediation shall be confidential and no record kept of the proceeding. The mediator will not be permitted to act as an arbitrator in the same case and the mediator shall not be called to testify in any proceeding regarding the mediation.

[(f) Mediation under this rule shall be available in all matters submitted to arbitration involving public customers where the amount of the claim is $500,000 or more, upon the consent of the parties. The mediator will be compensated under paragraph (b) of this rule.]

(6) [g] In all other matters submitted to arbitration, mediation shall be available upon the consent of the parties, at their own expense.

(b) Mediation Prior to Arbitration

(1) If the parties agree, any matter eligible for arbitration under the Constitution and Rules of the New York Stock Exchange may be mediated at the Exchange. To begin mediation under

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

[2] 17 CFR 240.19b–4.

this paragraph, the parties must file with the Exchange an agreement to mediate.

(2) At the time of filing an agreement to mediate, a party shall pay a non-refundable filing fee to the Exchange as required for the filing of an arbitration for the same amount in dispute under Rule 629 (Schedule of Fees) unless the fee is waived by the Director of Arbitration. The parties are directly responsible for the payment of the mediator's fee.

(3) If the case does not settle after mediation, the non-refundable filing fee will be applied to the non-refundable filing fee if a party elects a commence arbitration.

Rule 639 Administrative Conferences

In all cases where the amount of the claim is [$500,000] *$250,000* or more, the parties shall attend an administrative conference with the arbitrators. [The arbitrators will decide whether the conference is conducted by telephone or in person.] The Director of Arbitration will schedule the conference within [30] *90* days after the [answer is filed] *Director serves the Statement of Claim, unless all parties request that it be scheduled later. The administrative conference will be conducted by telephone with the chairperson presiding. In any claim involving a public customer, a public arbitrator will conduct the administrative conference, unless the public customer demands, in writing, a securities arbitrator. The chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference.*

At the conference, the Arbitrator(s) may establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the 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 NYSE 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 purpose of amending the extending the pilot programs (Rules 638 and 639) is to continue to offer mediation as a way of parties to settle cases earlier with lower costs.[3] The administrative conference allows the arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. The Exchange is also proposing to amend both pilot programs to include a greater number of cases by lowering the threshold amount to $250,000 from $500,000.

Mediation

Since November of 1998, the Exchange has sponsored a pilot mediation program. Under the pilot (Rules 638), a single mediation session of up to four hours is conducted in all cases not involving public customers submitted for arbitration where the amount of the claim is $500,000 or more. The Exchange pays the mediator up to $500.00 for this single mediation session. There are no costs assessed to the parties unless they select a mediator whose rate is higher or if the parties agree to go beyond the single session. Of the cases mediated under this provision of the pilot, approximately 31 percent (15 of 48) have settled before arbitration. Early settlements reduce costs and provide a greater measure of party satisfaction.

Under the pilot, mediation is also available in cases involving public customers where the claim is $500,000 or more upon agreement of the parties. These cases also qualify for the Exchange's $500 incentive payment to the mediator. In all other cases, mediation is available at the parties' own expense. The Exchange, however, will provide the parties with a list of mediators, will assist in facilitating the parties' agreement to mediate and will make its conference room facilities available for the mediation.

To evaluate the pilot, the staff of the Exchange met with mediators and lawyers who participated in mediation under the pilot. Based on the evaluators' comments and the settlement rate, the Exchange is proposing to extend the pilot for two years, as amended.

To encourage greater use of mediation, the Exchange proposes to amend the mediation pilot program to include all cases within a lowered threshold of claims of $250,000 or more. Most commentators supported the pilot's provision that a single mediation session of up to four hours be conducted in all cases with claims of $250,000 or more. This process relieves the parties from having to suggest mediation because the Exchange rule provides for it. Many parties believe that the other side will view their suggestion to mediate as a sign of weakness. it also assists counsel in getting their clients to consider mediation by making it part of the arbitration process—with little or no cost to them.

As amended, all cases with claims of $250,000 or more will be included in the pilot. This includes cases involving public customers. The pilot's inclusion of customer cases may lead to more and earlier settlements. Under the present pilot, where the parties have elected to mediate, 78.9 percent (15 of 19) of the customer cases with claims over $500,000 have settled before arbitration.

Under the present pilot, a single mediation session of up to four hours is conducted. Mediation is a voluntary process and neither the Exchange nor the mediator can require a party to mediate. The mediation may last less than four hours or the parties may refuse to participate at all. The pilot's only requirement is that the Director of Arbitration arrange for the mediation. The Director will delegate to the Exchange's staff the tasks of sending the parties a list of mediators and selecting a mediator from the list if the parties do not agree to a mediator. If the parties object to all the names on the list, the Director will appoint a mediator from outside the list. Once the parties or the Director selects a mediator, the Director will schedule the mediation and advise the parties. The mediator may contact the parties to preliminarily discuss the case. The pilot does not require the parties to do anything they do not wish to, including exchange information or documents; and there is no required pre-mediation exchange of exhibits. The goal of scheduling mediation is to encourage the parties to try to resolve the dispute as quickly and efficiently as possible. Unless the parties otherwise agree, mediation will not delay the arbitration.

The Exchange will continue to pay the mediator's fee for one session, up to $500, in cases where the rule provides that a single mediation session is to be conducted. Many commentators noted

[3] The Commission approved the Exchange's mediation program and administrative conference rule on a two-year pilot basis through November 20, 2000. *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998). On October 31, 2000, the Exchange's current pilot programs for mediation and administrative conferences were extended for six months. *See* Securities Exchange Act Release No. 43496, (October 31, 2000).

that the Exchange's provision for a single mediation session and incentive payment of the mediator's fee, up to $500, is helpful in encouraging their clients to agree to try mediation. The average mediation settles or reaches an impasse after approximately two sessions.

The Exchange is also proposing to allow parties to mediate without first filing for arbitration. The current pilot only applies to cases already filed with the NYSE for arbitration. Allowing the parties to mediate prior to filing an arbitration may save the parties some costs of arbitration. The party requesting mediation will be required to pay a non-refundable filing fee. This fee will be based upon the filing fee required for arbitration under Rule 629 for claims of the same amount. If the case does not settle after mediation,the Exchange will apply the fee to the non-refundable filing fee for arbitration. The parties are also required to pay the mediator's fee and agree on how the fee will be shared. The parties' agreement to mediate will not toll the time limitation for submission of a claim to arbitration.

As under the original pilot, cases with claims for less than $250,000 may also be mediated when the parties agree. However, in these cases the parties are responsible for payment of the entire mediator's fee. During the pilot program, where the parties have agreed to mediate claims below $500,000, 76 percent (16 of 21) have settled.

Administrative Conferences

Since November of 1998, the pilot program has provided for an administrative conference with the parties and arbitrators in cases over $500,000. The conference allows the arbitrators to set deadlines early in the case and resolve preliminary issues with the aim of expediting the arbitration. To date, 124 administrative conferences have been conducted. Most commentators supported the administrative conference with certain changes. The Exchange is proposing to amend and extend the pilot for two years.

In order to expedite a greater number of claims, the Exchange is proposing to lower the threshold for administrative conferences from $500,000 to $250,000. the Exchange is also proposing that, by default, the chairperson of the panel conduct the conference by telephone. This will allow the staff to schedule the conference earlier because it will involve coordinating the schedules of fewer persons. In cases involving public customers, a public arbitrator will conduct the administrative conference unless the public customer requests, in writing, a securities arbitrator. The Chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference. Under the amended pilot, the Director of Arbitration will schedule the conference 90 days after service of the Statement of Claim, rather than 30 days after the answer is filed. The additional period of time is intended to permit the parties to frame the issues for the administrative conference. The administrative conference pilot does not affect the parties' right to request a pre-hearing conference to resolve discovery disputes and other preliminary matters under Rule 619.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [4] 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.

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 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. 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 NYSE. All submissions should refer to File No. SR–NYSE–00–39 and should be submitted by December 8, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29467 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(6).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3476]

Determination; Assistance to the National Democratic Alliance (NDA)

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2261) (the ''Act''), and section 1–201 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $3.0 million in FY 2000 funds made available under Chapter IV of Part II of the Act for assistance to the civilian wing of the Sudanese National Democratic Alliance.

This authorization shall be reported to Congress immediately and published in the **Federal Register**.

Dated: October 31, 2000.

Madeline Albright,

Secretary of State.

[FR Doc. 00–29520 Filed 11–16–00; 8:45 am]

BILLING CODE 4710–26–P