crossed. Nasdaq believes that the requirement to promptly send a commitment contrasts with the current procedure expressed in the ITS Plan, which requires that a locking participant respond only after a locked market complaint has been properly registered. Nasdaq believes that the more stringent NASD requirement could cause ITS/CAES Market Makers to prematurely send a commitment to trade without having the input or an understanding of the locked or crossed party's intentions to trade. To eliminate this disparity and competitive disadvantage with other markets, Nasdaq will mirror the language of the ITS Plan and remove the more restrictive language with respect to locks or crosses that occur between ITS/CAES Market Makers and the exchange participants of the ITS Plan.

Nasdaq will, however, maintain its current, stricter standard of conduct with respect to locked and crossed markets that occur between ITS/CAES Market Makers within the Nasdaq InterMarket, which are not addressed by the ITS Plan. Specifically, Nasdaq believes that the requirement that ITS/CAES Market Makers promptly send orders whenever they lock or cross other ITS/CAES Market Makers, reduces the number and duration of locks and crosses that do, inevitably, occur within a competing dealer market. Nasdaq also believes that locking and crossing behavior can provide valuable price discovery information to market participants. Nasdaq believes, however, that economic and regulatory incentives help minimize the extent to which such locks and crosses interfere with the smooth operation of the InterMarket and with ITS/CAES Market Makers' internal systems. This is particularly important because CAES and ITS/CAES Market Makers operate on an automatic execution basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general and with Section 15A(b)(6) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq 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, as amended.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, provided that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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.

Nasdaq has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[12] In particular, the proposed rule changes bring Nasdaq rules into conformity with the approved ITS Plan and the August 28, 2002 Commission's Exemptive Order. For this reason, the Commission waives both the 5-day pre-filing notification requirement and the 30-day operative waiting period.

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 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–2002–152 should be submitted by December 11, 2002.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29483 Filed 11–19–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46824; File No. SR–NYSE–2002–43]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Arbitration

November 13, 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 3, 2002, the New York Stock Exchange, Inc. filed with the Securities and Exchange 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

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

[2] 17 CFR 240.19b–4.

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 amendments to rules 601 (Simplified Arbitration), 607 (Designation of Number of Arbitrators), 612 (Initiation of Proceedings), 617 (Adjournments), 629 (Schedule of Fees), 631 (Schedule for Member Controversies) and 632 (Member Controversies). The text of the proposed rule change is set forth below. New text is italicized; deletions are in brackets.

Rule 601. Simplified Arbitration

(a) Any dispute, claim or controversy, arising between a [public] customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding $[10,000] *25,000* exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required *non-refundable filing fee and* deposit, together with the documents in support of the Claim. Sufficient copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the Arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The Claimant shall pay a *non-refundable* filing fee and [remit] a hearing deposit as [specified in rule 629 upon the filing of the Submission Agreement.] *follows:*[3]

FEES FOR SIMPLIFIED ARBITRATION CUSTOMER AS CLAIMANT

Amount in dispute (excluding interest and costs)	Filling fee	Decision on papers	Decision after hearing
$1,000 or less	$15	$15	$15
1,001 to 2,500	25	25	25
2,501 to 5,000	50	75	100
5,000 to 10,000	75	75	200
10,001 to 25,000	100	100	400

INDUSTRY AS CLAIMANT

Amount in dispute (excluding interest and costs)	Filing fee	Decision on papers	Decision after hearing
$25,000 or less	$500	$300	$300

(Excluding Interest Decision Decision after and Costs) Filing Fee On Papers Hearing $25,000 or less $500 $300 $600

The final disposition of the [sum] filing fee and hearing deposit shall be determined by the Arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from the receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient[4] copies for the Arbitrator(s) along with any deposit required under the schedule of fees *above.* The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's answer containing the Third Party Claim, and a copy of the original Claim filed by the Claimant. The Third Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding $[10,000] *25,000*, the Arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of three (3) arbitrators in accordance with rule 607 of this Code, or he may dismiss the Counterclaim and/or Third Party Claim, without prejudice to the counter-claimants and/or third party claimants pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified [in rule 629] *in the schedule above.*

(e) to (h) Unchanged.

[(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.]

[(k)] *(i)* In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

[(l)]*(j)* Except as otherwise provided herein, the general arbitration rules of the New York Stock Exchange, Inc. shall be applicable to the proceedings instituted under this Rule.

Rule 607. Designation of Number of Arbitrators

(a)(1) In all arbitration matters involving [public] customers and non-members where the matter in controversy exceeds $[10,000] *25,000*, or

[3] The original proposed rule change omitted ''(c) '' from the first line of this subparagraph. Commission staff made the correction. Telephone conference between Robert Clemente, Director—Arbitration, NYSE, and Steven Johnston, Special Counsel, Division of Market Regulation (''Division''), Commission on November 4, 2002.

[4] There appears to be confusion among various texts of current NYSE rule 601 as to whether this word should be ''sufficient'' or ''additional.'' The NYSE intends to use the word ''sufficient.'' Telephone conversation among Robert Clemente, Director—Arbitration, NYSE and Florence Harmon, Senior Special Counsel, and Steven Johnston, Special Counsel, Division, Commission on October 24, 2002.

where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the [public] customer or non-member requests a panel consisting of at least a majority from the securities industry.

Rule 612. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim together with documents in support of the claim and the required *filing fee and hearing* deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Unchanged.[5]

(c)(1) and (c)(2) Unchanged.[6]

(c)(3) Respondent(s) shall serve each party with a copy of any Third Party Claim. The Third Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under [the] *rule 629(i)* schedule of fees. Third Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in paragraphs (1) and (2) above.

Rule 617. Adjournments

(a) Unchanged.[7]

(b) A party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $[1,000] *1,500,* for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

Rule 629. Schedule of Fees

(a)–(g) Unchanged.

(h) The fee for a pre-hearing conference with an arbitrator shall be:

SCHEDULE FOR PRE-HEARING CONFERENCE WITH ONE ARBITRATOR[(S)]: [1]

Amount in controversy	Conference fee
$1,000 or less	$15.00
1,00[0.01] *1* up to 2,500	25.00
2,50[0.01] *1* up to 5,000	100.00
5,00[0.01] *1* up to 10,000	200.00
10,00[0.01] *1* up to [30,000] *25,000*	300.00
[30,000.01 up to 50,000	300.00
50,000.01 up to 100,000	300.00
100,001 up to 500,000	300.00
500,001 up to 5 million	300.00
Greater than 5 million	300.00]
Over 25,000	450.00

[1] Fee for pre-hearing conference with three arbitrators shall be based on applicable hearing session deposit fee.

(i) Schedule of Fees

For purposes of the schedule of fees the term ''claim'' includes Claims, Counterclaims, Third-Party Claims or Cross-Claims. Any such claim submitted by a customer is a customer claim. Any such claim submitted by a member, allied member, registered representative, member firm or member corporation against a [public] customer or other non-member is an industry claim.

For claims of $25,000 or less see schedule of fees in Rule 601. Simplified Arbitration.

CUSTOMER AS CLAIMANT

Amount of dispute ([exclusive of] *excluding* interest and expenses)	Hearing deposit		
	Filing fee	[Simplified]	[Hearing]
[$1,000 or less	$15	$15	$15
1,001 to 2,500	25	25	25
2,501 to 5,000	50	75	100
5,001 to 10,000	75	75	200
10,001 to 30,000	100	N/A	400]
[30,001] *25,001* to 50,000	120	[N/A]	400
50,001 to 100,000	150	[N/A]	500
100,001 to 500,000	200	[N/A]	750
500,001 to 5,000,000	250	[N/A]	1,000
Over 5,000,000	300	[N/A]	1,500

[5] NYSE authorized Commission staff to clarify omitted rule text. Telephone conversation Robert Clemente, Director—Arbitration, NYSE and Florence Harmon, Senior Special Counsel, and Steven Johnston, Special Counsel, Division, Commission on November 7, 2002.

[6] See footnote 5, above.

[7] See footnote 5, above.

INDUSTRY AS CLAIMANT [1]

Amount of Dispute [exclusive of] *excluding* interest expenses)	Filing fee	Hearing deposit	
		1 Arb.	3 Arbs.
[$1,000 or less	$500	$300	$600
1,001 to 2,500	500	300	600
2,501 to 5,000	500	300	600
5,001 to 10,000	500	300	600
10,001 to 30,000	500	300	600
30,001 to 50,000	500	300	600]
[50,001] *25,001* to 100,000	500	[300]	600
100,001 to 500,000	500	[300]	750
500,001 to 5,000,000	500	[300]	1,000
Over 5,000,000	500	[300]	1,500

[1] This is the fee schedule for claims submitted by members, member firms, member corporations or allied members against *members, member firms, member corporations or allied members,* [public] customers, registered representatives or non-members other than [public] customers, and for claims submitted by registered representatives or non-members other than [public] customers against members, member firms, member corporations, allied members or non-members. [The one arbitrator column is for pre-hearing conferences and for simplified arbitration, where the industry party is a claimant against a public customer].

[Rule 631. Schedule for Member Controversies

At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and remit a hearing session deposit with the New York Stock Exchange, Inc. in the amounts indicated below:

Amount in dispute	Filing fee	Hearing deposit
$5,000 or less	$100	$200
5,001 to $100,000	200	750
100,001 or more	300	1,000

Where the claim or controversy does not involve or disclose a money claim or is unspecified, the filing fee will be $300 and the hearing session deposit shall be $1,000 per hearing session.

The fee for a pre-hearing conference with an arbitrator in a member controversy shall be as follows:

Amount in dispute	Conference fee
$5,000 or less	$150
5,001 to 100,000	300
100,001 or more	500

Rule 632. Member Controversies

Any controversy between parties who are members, allied members, member firms or member corporations shall be submitted for arbitration to members of the Board of Arbitration, unless non-members are also parties to the controversy. If the amount ([exclusive of] *excluding* interest and costs) involved in the controversy is less than $[10,000] *25,000* the controversy shall be heard by one arbitrator. If such amount is $[10,000] *25,000* or more the controversy shall be heard by [at least] three (3) [but not more than five (5)] arbitrators *unless the parties consent to one arbitrator.* If non-members are also parties to such controversies, the arbitrators shall be appointed in accordance with rule 607 unless the non-member(s) consent to arbitration before members of the Board of 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 self-regulatory organization 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 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 changes are intended to:

• Increase the ceiling for claims eligible for submission under the Simplified Arbitration procedures from $10,000 to $25,000 (rules 601, 607 and 629).

• Clarify that both a filing fee and hearing deposit must be submitted with the filing of a claim in arbitration (rule 612).

• Increase the maximum adjournment fee from $1,000 to $1,500 to conform to the maximum hearing deposit upon which adjournment fees are based (rule 617).

• Increase pre-hearing conference fees in claims over $25,000 from $300 to $450 (rule 629(h)).

• Incorporate filing fees and hearing deposits for disputes between members into the schedule of fees for ''Industry as Claimants'' (rules 629(i) and 631).

• Increase the ceiling from $10,000 to $25,000 for claims between members to be decided by one arbitrator. In addition eliminate reference to a panel ''of no more than five arbitrators'' (rule 632).

The proposed amendments to rules 601, 607 and 629 increase the ceiling on claims eligible for submission under the Simplified Arbitration procedures from $10,000 to $25,000. Under the Simplified Arbitration procedures, one arbitrator is appointed to decide the dispute based upon the parties' submissions, unless the customer requests a hearing. These proposed amendments conform to amendments to the Uniform Code of Arbitration adopted by the Securities Industry Conference on Arbitration (''SICA'') and adopted by other SROs.[8]

In addition, the amendments simplify the rules by placing the fee schedule for Simplified Arbitration in rule 601 rather than referring to rule 629. The proposed

[8] NASD rule 10302(a).

amendment to rule 607 conform the rule to the increase in the claims eligible for submission under the Simplified Arbitration procedure (rule 601). These amendments do not impact the cost to customers who submit their claims to arbitration.

The proposed amendments to rules 612 and 617 are housekeeping in nature and not substantive changes. The amendments to rule 612 clarify that both a filing fee and hearing deposit must be submitted with the filing of a claim in arbitration. The amendments to rule 617 increase the maximum adjournment fee from $1,000 to $1,500. This is to conform the adjournment fees to the maximum hearing deposit, upon which adjournment fees are based.

In addition, the Exchange is proposing to increase pre-hearing conference fees in claims over $25,000 from $300 to $450 (rule 629(h)). The increase in pre-hearing conference fees is warranted by the increased frequency and complexity of pre-hearing conferences. This increase conforms to the pre-hearing conference fees assessed by other SROs.[9]

The proposed amendments to rule 629(i) eliminate the need for rule 631 by incorporating the fees and deposits for disputes between members into the schedule of fees for ''Industry Claimants'' under rule 629. These amendments will increase the cost to members in disputes with other members and provides for a more equitable distribution of the cost of arbitration of member to member disputes with all other disputes initiated by a member or associated person. These amendments also simplify the fee schedules by deleting rule 631 (Schedule for Member Controversies) and consolidating that fee schedule with the Schedule of Fees for Industry Claimants (rule 629).

The proposed amendments to rule 632 increase the ceiling from $10,000 to $25,000 for claims between members that are heard and decided by one arbitrator. In addition, the proposed amendment eliminates the clause that provided for an arbitration panel of no more than five arbitrators. The Exchange has not impaneled five arbitrators on a case since the mid-1980s when the general rules were amended to provide for a panel of no less than three arbitrators. A panel of five arbitrators is unnecessarily burdensome and provides no benefit to the process.

2. Statutory Basis

The proposed changes are consistent with section 6(b)(5) of the Act[10] in that they promote just and equitable principles of trade by insuring 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 the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes 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 the filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to SR-NYSE–2002–43 and should be submitted by December 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29403 Filed 11–19–02; 8:45 am]

BILLING CODE 8010–01–P

[9] NASD rule 10332(k).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P001]

State of Alaska

As a result of the President's major disaster declaration for Public Assistance on November 8, 2002, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough, the Regional Education Attendance Areas (REAA) of Delta Greely, Alaska Gateway, Copper River and Yukon-Koyukuk, and the cities of Tetlin, Mentasta Lake, Northway, Dot Lake, Chistochina, Tanacross and the unincorporated communities of Slana and Tok in the State of Alaska constitute a disaster area due to damages caused by an earthquake occurring on November 3, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 7, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	3.324
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P00102.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).