

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-11360 Filed 5-5-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41344; File No. SR-NYSE-99-04]

### Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amending Rule 347 To Expressly Allow Employees To Bring Employment Related Claims Before the EEOC, NLRB, or State or Local Anti-Discrimination Agencies

April 28, 1999.

#### I. Introduction

On February 5, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19B-4 thereunder,<sup>2</sup> a proposed rule change amending Exchange Rule 347 to expressly allow employees to bring employment related claims before the Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB"), or state or local anti-discrimination agencies.

The proposed rule change was published for comment in the **Federal Register** on March 18, 1999.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The proposed rule change codifies the Exchange's interpretation of Exchange Rule 347 regarding the arbitration of employment disputes. Generally, Exchange Rule 347 requires that any controversy between a registered representative and the member or member organization that employs him arising out of employment or the termination of employment be settled by arbitration. This requirement does not extend to statutory employment discrimination claims.<sup>4</sup> The proposed

amendment to Exchange Rule 347 would clarify that the Exchange's Rule should not be interpreted to preclude employees from bringing employment-related claims against members and member organizations before the EEOC, NLRB, or state or local anti-discrimination agencies.<sup>5</sup>

The proposed amendment would address an issue recently raised by a Teamsters Union Local with the NLRB. The Teamsters Union Local alleged that the Exchange's prior arbitration policy interfered with rights guaranteed by the National Labor Relations Act by prohibiting employees from filing and pursuing charges with the NLRB. While the Exchange has never interpreted its arbitration rules to preclude employees of members or member organizations from pursuing such charges, the Exchange determined it would resolve the issue by amending Exchange Rule 347 to codify the existing Exchange interpretation.

#### III. Discussion

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 exchange,<sup>6</sup> and in particular, with the requirements of Section 6(b)(5).<sup>7</sup> Specifically, the Commission finds that clarifying the rights of employees to bring employment-related claims before the EEOC, NLRB, or any state or local anti-discrimination agencies serves to promote just and equitable principles of trade, and, in general, to protect the public interest. The proposed rule change ensures that employees, members and member organizations have a fair and impartial forum for the resolution of their disputes.

By changing its rule, the Exchange codifies its current interpretation of Exchange Rule 347 to provide that Exchange Rules are not intended to, and should not be construed to prohibit employees from bringing employment-related claims against members or member organizations before the EEOC, NLRB, or any state or local anti-discrimination agencies. This interpretation is consistent with the Exchange's recent amendment to Rule 347, which excluded claims of

for Exchange arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

<sup>5</sup> The Commission notes that the amendment should not affect the obligation, under NYSE rules, of Exchange members of their employees to arbitrate claims brought by customers against them.

<sup>6</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78F(b)(5).

employment discrimination from arbitration unless the parties have agreed to arbitrate the claim after it has arisen.<sup>8</sup>

Under the Act, self-regulatory organizations ("SROs") like the Exchange are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to Section 19(b)(2) of the Act,<sup>9</sup> the Commission is required to approve an SRO rule change like the Exchange's if it determines that the proposal is consistent with applicable statutory standards.<sup>10</sup> These standards include Section 6(b)(5) of the Act,<sup>11</sup> which provides that the Exchange's rules must be designed to, among other things, "promote just and equitable principles of trade" and "protect investors and the public interest."

#### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-99-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-11362 Filed 5-5-99; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### Region 1 Advisory Council; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Wednesday, May 26th, 1999 at the Augusta Civic Center, Civic Center Drive, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S.

<sup>8</sup> See Securities Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> The Commission oversees the arbitration programs of the SROs, including the Exchange's, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 41151 (March 10, 1999) 64 FR 13460.

<sup>4</sup> See Exchange Rules 347 and 600. Under the Exchange's Rules, discrimination claims are eligible