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.'' Section 6(b)(5) also provides that the Exchange's rules may not be designed to ''regulate . . . matters not related to the purposes of the (Exchange Act) or the administration of the (Exchange).''

By changing its rules, the NYSE proposal provides that statutory employment discrimination claims are eligible for submission to arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise. This narrow amendment to the NYSE's rules affects only the arbitration of employment discrimination claims between NYSE members and their employees.[31] This proposal is consistent with the applicable statutory standards.[32] The statutory employment anti-discrimination provisions reflect an express intention that employees receive special protection from discriminatory conduct by employers. Such statutory rights are an important part of this country's efforts to prevent discrimination. It is reasonable for the NYSE to make a policy determination that in this unique area it will not, as an SRO, require or permit arbitration unless there is a post-dispute agreement. It is also proper under the Exchange Act for one SRO's policy determination to differ from that of another.

Section 3(f), raised by one commenter, addresses issues concerning efficiency, competition, and capital formation. The Exchange's proposal fosters competition by providing different approaches for dispute resolution among markets and among brokers and dealers.

The benefits of the Exchange's proposal to employees with employment discrimination claims and to the employer/employee relationship are clear. The Exchange's provision of an arbitration forum for employment discrimination disputes where the parties choose arbitration after the dispute arises is consistent with section 3(f).

With respect to the bifurcation issue raised by the commenters, the Supreme Court, in *Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 217 (1985), acknowledged the appropriateness of bifurcation between federal statutory and pendant state law claims. The Exchange noted in its response that there is a potential for bifurcation in some cases. However, in many instances it is likely that parties will agree to proceed in a single forum. The Commission notes that the Exchange stated that it will monitor its actual experience under the proposal, including bifurcation, and consider appropriate action in the future if warranted.

The proposal is not, as one commenter suggested, inconsistent with the FAA. The FAA does not mandate that all claims be arbitrated. The FAA provides that privately negotiated arbitration agreements should be enforced, upon motion of a party. Further, the FAA does not require an arbitration provider such as the Exchange to make its forum available to hear particular types of cases.

With respect to other comments that suggested that the NYSE should enact other rules concerning employer/employee arbitration agreements or extend this rule to other causes of action, these issues are left to the NYSE to consider in the first instance.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[33] that the proposal, SR–NYSE–98–28 be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

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[31] The amendment in no way affects the obligation, under NYSE rules, of Exchange members or their employees to arbitrate claims brought by customers against them.

[32] U.S.C. 78o–3(b)(6).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40841; File No. SR–NYSE–98–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., To Set the Monthly Limit on Transaction Charges for 1999 at $400,000 per Member Firm

December 28, 1998.

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 December 1, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''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. On December 19, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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 current fee structure provides for a $400,000 cap on an individual member firm's monthly transaction charges and is in effect through the end of 1998. The proposed revision sets the monthly transaction charge cap at $400,000 for 1999.

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 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 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

The purpose of the change is to respond to the needs of our constituents with respect to overall competitive market conditions and customer satisfaction.

2. Statutory Basis

The Basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[4] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President, NYSE, to Joseph Corcoran, Attorney, Division of Market Regulation, Commission, dated December 19, 1998 (''Amendment No. 1''). In Amendment No. 1, the NYSE proposes to amend its fee schedule to reflect the continuation of the $400,000 cap on an individual member firm's monthly transaction charge.

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

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

The Exchange believes that the proposed fee change will not 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 not solicited comments regarding the proposed Rule Change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (e)(2) of Rule 19b–4 thereunder.[6] 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.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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–98–43 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered it is potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40837; File No. SR–NYSE–98–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Adopt Exchange Rule 437 (''Participation in Year 2000 Testing'')

December 28, 1998.

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 17, 1998, as amended on December 23, 1998,[3] the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

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

The proposal consists of the adoption of new Rule 437 (''Participation In Year 2000 Testing'').

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Rule 437

Participation in Year 2000 Testing

Rule 437. Each member not associated with a member organization, and each member organization shall participate in industry testing of computer systems designed to prepare for Year 2000, in a manner and frequency as prescribed by the Exchange.

Supplementary Material * * *

10 Members and member organizations that do not have or use computer systems in the conduct of their business, other than those supplied by the Exchange, are not subject to the requirements of this Rule.

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 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 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

Rule 437 is intended to provide the Exchange with the ability to require certain members and member organizations to participate in industry testing of computer systems in preparation for the Year 2000 in such manner and frequency as prescribed by the Exchange.

Significant industry attention is being directed to proper systems preparation in order to avoid potential computer problems that may arise relating to the Year 2000. The primary concern is that computer systems may incorrectly read the date ''01/01/00'' as being the Year 1900 or another incorrect date.

The securities industry has cooperatively been addressing the potential ''Year 2000 Problem'' in stages which have included assessment of the problem, implementation of remedial measures, and internal testing. The next stage involves industry-wide testing of computer systems. Test participants are scheduled to include, among others, exchanges, registered clearing corporations and depositories, data processors, and broker-dealers.

Testing by and among a broad range of securities industry participants will be of critical importance to ensure that

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated December 21, 1998. The original filing was not noticed in the **Federal Register**.