

could operate significantly to the detriment of the financial interests of the funds and their shareholders. Applicant and the Covered Entities will make presentations to the boards of directors of the funds they advise or subadvise regarding the Cooperation and Plea Agreement and the reasons they believe relief pursuant to section 9(c) is appropriate. Applicant has undertaken to provide those funds with all information concerning the Cooperation and Plea Agreement and its application necessary for those funds to fulfill their disclosure and other obligations under federal securities laws.

5. Applicant also asserts that its conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicant states that neither applicant nor any Covered Entity has ever previously applied for an exemption pursuant to section 9(c) of the Act. Applicant also states that the matters underlying the Cooperation and Plea Agreement are unrelated to applicant's or Covered Entities' investment advisory activities.

6. Applicant states that the Cooperation and Plea Agreement relates to books and records violations involving payments by applicant as custodian or paying agent or in performing other processing services. Applicant states that, although it has been unable to identify all persons to whom it improperly failed to make payments, none of the identified persons were funds, and none of the relevant payments by applicant as paying agent were on behalf of fund issuers. Applicant asserts that it has not been able to identify any fund client of applicant's custody services or any fund shareholder affected by applicant's transfer agent services as having been affected by the matters giving rise to the Cooperation and Plea Agreement.

7. Applicant states that the former employees of applicant who were identified by applicant as having been responsible for the matters underlying the Cooperation and Plea Agreement ("Identified Former Employees") are no longer employed by applicant or any Covered Entity. Applicant also states that, since 1996, applicant has implemented steps designed to prevent future violations of applicable laws and regulations relating to its handling of payments in its capacity as custodian, paying agent, benefit plan agent and similar roles. Applicant states that these steps have included an entirely new senior management team that assumed responsibility in 1997 for the business out of which the Cooperation and Plea

Agreement arose; implementation by applicant of a formal "Abandoned Property and Escheatment Policy" and appointment of an Abandoned Property Officer; and an extensive effort to research and distribute any moneys involved in the transactions to the rightful owner of the proper abandoned property authority.

Applicant's Conditions

Applicant agrees that the requested order will be subject to the following conditions:

1. The application and any exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including without limitation, the consideration of applicant's contemplated request for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act, or the revocation, removal or extension of this temporary exemption or any temporary exemption granted in connection with an application for a permanent order.

2. Neither applicant nor any Covered Entity will employ any of the Identified Former Employees, or any persons who are subsequently identified as having been responsible for the matters underlying the Cooperation and Plea Agreement, in any capacity without first making further application to the Commission pursuant to section 9(c).

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicant, finds, in accordance with 17 CFR 200.30-5(a)(7), that it appears that (i) the prohibitions of section 9(a), as applied to applicant and Covered Entities, may be unduly or disproportionately severe, (ii) applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (iii) granting the temporary exemption would protect the interests of the investment companies served by applicant and the Covered Entities by allowing time for the orderly consideration of an application for permanent relief.

Accordingly, *it is hereby ordered*, under section 9(c), that applicant and the Covered Entities are granted a temporary exemption from the

provisions of section 9(a), effective forthwith, solely with respect to the Cooperation and Plea Agreement, subject to the conditions in the application, until the Commission takes final action on an application for a permanent order or, if earlier, May 11, 1999.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41151; File No. SR-NYSE-99-04]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 347 To Expressly Allow Employees To Bring Employment Related Claims Before the EEOC, NLRB, or State or Local Anti-Discrimination Agencies

March 10, 1999.

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 February 5, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission, ("Commission") the proposed rule change. The proposed rule change is described in Items I, II, and III 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.

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

The proposed rule change amends Exchange Rule 347, Controversies As to Employment or Termination of Employment, 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 text of the proposed rule change follows. New text is italicized.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule 347. Controversies As to Employment or Termination of Employment

- (a) No Change.
- (b) No Change.

Supplementary Material

10 Nothing in the Rules of the New York Stock Exchange, Inc. is intended, nor shall be construed, to prohibit any employee from bringing a claim against any member or member organization arising out of the employment or termination of employment of such employee with such member or member organization before the Equal Employment Opportunity Commission, any state or local anti-discrimination agency, or the National Labor Relations Board.

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 proposed rule change is to revise exchange rule 347 to codify current Exchange 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 of member organization that employs him arising out of said employment or the termination of said employment be settled by arbitration.¹

¹ Recent changes to Exchange Rules 347 and 600 remove statutory employment discrimination claims from Rule 347's requirement that all employment disputes between a registered representative and member or member organization be arbitrated at the request of either party. Securities Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999). Under the amended Rules, such discrimination claims will be eligible for Exchange arbitration only where the parties have agreed to arbitrate the claim after it has arisen and the Exchange will not provide an arbitral forum for statutory employment discrimination claims pursuant to pre-dispute agreements.

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.

In addition, the proposed amendment would address an issue recently raised by a Teamsters Union Local with the NLRB.² 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 that it would resolve the issue by amending Exchange Rule 347 to codify the existing Exchange interpretation. Accordingly, the Exchange proposes to add Supplementary Material .10 to Exchange Rule 347 to provide that Exchange Rules are not intended to, and shall 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.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act³ which requires that the rules of the Exchange is 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, in that it ensures 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 believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

² By letter dated July 14, 1998, the NLRB notified the Exchange that Teamsters Union Local 856 of the International Brotherhood of Teamsters, AFL-CIO, has filed an unfair labor practice charge with the NLRB.

³ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received any comments.

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

Within 35 days of the 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 changed, 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, N.W., Washington, D.C. 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 in Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-04 and should be submitted by April 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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⁴ 17 CFR 200.30-3(a)(12).