

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48762; File No. SR-NYSE-2003-26]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 To Provide for the Elimination of "Registered Representative-in-Charge" as a Category Precluded From Being an Independent Contractor

November 7, 2003.

On September 3, 2003, 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 to amend an Interpretation of NYSE Rule 345 in order to permit independent contractors to serve as "Registered Representatives-In-Charge." Notice of the proposed rule change was published for comment in the **Federal Register** on October 7, 2003.<sup>3</sup> No comments were received on the proposed rule change.

NYSE Rule 342.15 provides that a small office (one with three or fewer registered representatives) may be in the charge of a non-resident qualified principal or manager. However, pursuant to Interpretation /02 to the same Rule, in such a case, a resident registered representative must be designated as "in charge." Currently, Interpretation /02 to Rule 345(a) prohibits a natural person registered representative who is an independent contractor from serving as a "registered representative-in-charge."

The Exchange has represented that small offices with independent contractors typically have a limited securities sales business, and that "members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge."<sup>4</sup> According to the Exchange, NYSE member organizations believe that prohibiting registered representatives in charge of small offices from being independent contractors creates an unnecessary burden. To address this position, the Exchange proposes to allow registered representatives-in-charge to associate

with members and member organizations as independent contractors, provided that the member or member organization does not assign or delegate supervisory responsibilities to such persons, and submits a written statement to that effect.

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>5</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange 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. The Commission believes that the proposed rule change should reduce the regulatory burdens of NYSE members and member organizations and allow them an appropriate degree of flexibility in their management of personnel in small offices.

At the same time, the Commission notes that the proposed rule change does not alter in any way the obligation of NYSE members or member organizations to oversee the operation of their businesses and supervise the performance of their associated persons in a manner that assures compliance with the Act and rules and regulations thereunder, as well as applicable rules of the NYSE. The Commission therefore believes that the proposal is consistent with its longstanding position that regardless of their designation, independent contractor registered representatives are considered "associated persons" of a broker-dealer under the Act if their activities are subject to control by the broker-dealer, such as when there is a principal and agent relationship.<sup>7</sup>

To this end, the Commission notes that other NYSE rules governing the supervision of personnel that relate to independent contractors and small offices will remain unchanged. Thus, NYSE Interpretation /02 to Rule 345(a)

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See Letter to Gordon S. Macklin, President, National Association of Securities Dealers, Inc. from Douglas Scarff, Director, Division of Market Regulation, Commission (June 18, 1982) (on file with the Commission). See also *Privacy of Consumer Financial Information (Regulation S-P)*, Rel. No. 34-42974 (June 22, 2000), 65 FR 40334 (June 29, 2000); *Matter of Crute*, 53 S.E.C. 1112 (December 21, 1998).

will continue to provide that status as an "independent contractor" does not preclude characterization and treatment as an employee for purposes of the NYSE Constitution and Rules. Moreover, NYSE rules will continue to require that qualified supervisors perform all supervisory functions, such as approval of accounts and review of account activity.<sup>8</sup> Indeed, NYSE will require that where a registered representative-in-charge is an independent contractor, the employing member or member organization submit a written statement confirming that it has not assigned or delegated supervisory responsibilities to the registered representative-in-charge. This written statement will be in addition to documents already required to be submitted by the member or member organization in seeking approval of independent contractor status, such as written assurances that the member or member organization will supervise and control all activities of the independent contractor the same as it regulates the activities of all other registered representatives.<sup>9</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-NYSE-2003-26) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-28613 Filed 11-14-03; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Proposed Advisory Circular; Instructions for Continued Airworthiness; Maintenance Tasks for High Intensity Radio Frequency (HIRF)/ Electromagnetic Interference (EMI)/ Lightning Protection Features

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of proposed advisory circular and request for comments.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the availability of proposed advisory circular (AC) number 33.4-3,

<sup>8</sup> See NYSE Rules 342, 345.

<sup>9</sup> See NYSE Rule 345(a), Interpretation /02.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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> See Release No. 34-48579 (October 1, 2003), 68 FR 57947 ("Notice").

<sup>4</sup> Notice, 68 FR at 57948.

Instructions for Continued Airworthiness; Maintenance Tasks for High Intensity Radio Frequency (HIRF)/Electromagnetic Interference (EMI)/Lightning Protection Features.

**DATES:** Comments must be received on or before February 16, 2004.

**ADDRESSES:** Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Gary Horan, Engine and Propeller Standards Staff, ANE-110, 12 New England Executive Park, Burlington, MA 01803-5299.

**FOR FURTHER INFORMATION CONTACT:** Gary Horan, Engine and Propeller Standards Staff, ANE-110, at the above address, telephone: (781) 238-7164; fax: (781) 238-7199; e-mail: [gary.horan@faa.gov](mailto:gary.horan@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: <http://www.airweb.faa.gov/rgl>. The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

##### Background

This AC provides guidance and methods, but not the only methods, that may be used to demonstrate compliance with § 33.4 of title 14 of the Code of Federal Regulations (14 CFR 33.4), Instructions for Continued Airworthiness. This AC provides maintenance tasks to ensure the integrity of HIRF/Lightning protection features.

(Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704.)

Issued in Burlington, Massachusetts, on November 6, 2003.

**Robert Guyotte,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03-28618 Filed 11-14-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application (04-09-C-00-JAC) To Impose and To Use a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent To Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before December 17, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig A. Sparks, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Schaffer, (303) 342-1258; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (04-09-C-00-JAC) to impose and use a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 2003, the FAA determined that the application to impose and use a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of part

158. The FAA will approve or disapprove the application, in whole or in part, no later than February 7, 2004.

The following is a brief overview of the application:

*Level of the proposed PFC:* \$4.50.

*Proposed charge effective date:* May 1, 2004.

*Proposed charge expiration date:* February 1, 2007.

*Total requested for use approval:* \$1,814,693.00.

*Brief description of proposed project:* Terminal building expansion, landside improvements, noise monitoring system and part 150 update, runway threshold lighting, and a fence and gate.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Range, Airports Division, ANM-600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington on November 6, 2003.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 03-28619 Filed 11-14-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Bartow County, GA

**AGENCY:** Federal Highway Administration (FHWA), Georgia Department of Transportation (GDOT).

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a supplemental draft Environmental Impact Statement (EIS) will be prepared for the proposed new location extension of US 411 in Bartow County, Georgia.

#### FOR FURTHER INFORMATION CONTACT:

Robert M. Callan, P.E., Division Administrator, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, GA 30303-3104, Telephone (404) 562-3630 and/or Mr.