others) that is in essence a commission solely when they are acting in an agency capacity. Similar to ECNs. While a market maker may not be able to charge a fee when it is acting in a principal's capacity for the reasons previously cited by the SEC staff, Nasdaq believes that it would be consistent with the Exchange Act Firm Quote Rule to permit market makers to charge a fee when they are acting as agent. Accordingly, Nasdaq believes that this rule proposal is consistent with Section 11A of the Act.[27]

(B) Self-Regulatory Organization's Statement to Burden on Competition

Nasdaq does not believes 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

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 such proposed rule change, 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. The Commission asks for comments in particular on the following questions:

1. Should market makers be permitted to charge a fee to trade with limit orders in their agency quote lines? In addition to charging for agency orders displayed in their agency quote lines, should market makers be permitted to charge a fee for proprietary orders displayed in their agency quote lines?

2. Should any fee charged by market makers for orders executed against their agency quote lines be included in the quoted price? Should ECN fees be included in an ECN's quote? If ECN fees are required to be included in the quote, how should the fact that an ECN may have a range of fees it charges its broker-dealer subscribers be addressed?

3. Should there be a maximum permissible fee charged by market makers and ECNs, and if so, what should that fee be? Should market makers and ECNs be prohibited from charging a fee that is greater than one trading increment? Would disparate fees create confusion in the marketplace?

4. Will competition ensure that fees are not used as a barrier to access?

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 at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–16 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11361 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

[27] 15 U.S.C. 78k–1.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41346; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Permanently Approving the Pilot Program for the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

April 29, 1999.

I. Introduction

On January 26, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 under the Act,[2] a proposed rule change creating a pilot program (''pilot'') relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940 (''Funds'').

Notice of the proposal was published in the **Federal Register** on February 3, 1999.[3] The Commission received one comment letter on the proposal. On April 21, 1999, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This notice and order approves the proposed rule change as amended and seeks comment from interested persons on Amendment No. 1.

II. Description of the Proposal

The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the fund does not have a three-year operating history and is thus considered newly formed. On January 26, 1999, the Exchange proposed to codify its policy regarding the listing of these newly organized Funds.[5] The same day, the Commission granted partial accelerated approval to the proposal as a three-month pilot, effective until April 29, 1999.

Under the pilot, if a Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. This requirement is the minimum net asset requirement for listing. Additionally, the Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

Lastly, Funds are subject to continued financial listing standards. The Exchange generates a monthly exception report to identify companies below the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999).

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 21, 1999 (''Amendment No. 1''). In Amendment No. 1, the NYSE added a requirement that an applicant Fund, which is a spin-off or carve-out, show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

[5] The Exchange sought both accelerated approval to implement a three-month pilot program to amend its *Listed Company Manual* with respect to Funds and permanent approval of the rule change implemented in the pilot.

Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

The Exchange is proposing an exception to the ''Firm underwriting commitment'' required in the pilot.[6] The Exchange contends that spin-offs and carve-outs are not the subjects of an underwriting and, therefore, are unable to submit the requisite undertaking letter. Accordingly, an applicant Fund, which is a spin-off or carve-out, must show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

III. Summary of Comments

The Commission received one comment letter from the Investment Company Institute (''ICI''),[7] which opposed the proposal.[8] The Exchange responded to this letter.[9]

In its letter the ICI questioned a number of aspects of the proposal, including: the reason for proposing solely a net asset based eligibility listing standard; the rationale for the proposed $60 million threshold; the application of the requirement (*i.e.*, whether funds currently listed are grandfathered from the requirements); and, the existence of any other listing standards and requirements.

In its response, the Exchange argued that the proposed rule change is merely a codification of an existing practice, which has evolved over time as a way to assess the financial viability of a newly organized Fund that does not have a three-year operating history against which the Exchange's general listing standards can be applied[10] The Exchange also explained that ICI's concern that the net asset standard is the only standard applicable to Funds is unfounded because Funds are also subject to the Exchange's distribution and corporate governance standards. Finally, the Exchange stated that grandfather provisions are not necessary because the $60 million threshold is the minimum requirement imposed. The Exchange also noted that it is developing specific standards to judge a Fund for continued listing status.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protest investors and the public.

The Commission recognizes that in many cases the applicant Fund is not a traditional operating entity and therefore it is not possible to apply the earnings standards specified in the Exchange's *Listed Company Manual* at the time of listing. Thus, the Commission believes that the Exchange's proposed listing standard serves as an acceptable means for screening out those Funds that the Exchange believes are unsuitable for listing because of insufficient assets. The Commission recognizes that the net assets test in intended as a minimum standard and that the Exchange may, with respect to a given Fund, determine that, notwithstanding sufficient net assets, the Fund may otherwise be unsuited for listing.

The Commission carefully considered the concerns expressed by the ICI in its letter opposing the proposal. Ultimately, the Commission concluded that the net asset standard codified by the Exchange in the proposal is a clear, nondiscriminatory standard that should promote transparency with respect to the Exchange listing standards for Funds and is not inconsistent with the Act. The Commission believes that the proposed standard should promote certainty and reduce costs in the listing process which should benefit investors and other market participants.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The amendment addresses those Funds that would not be the subject of an underwriting (*i.e.*, spin-offs and carve-outs), and as such, would be unable to submit the requisite undertaking letter. The proposed amendment would permit these Funds to show the NYSE that they meet the asset test through another acceptable means (*i.e.*, through a representation by the parent company's investment banker or other financial advisor). Because the Commission believes the amendment is an appropriate accommodation for spin-offs and carve-outs, which could not comply with the original proposal, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–02 and should be submitted by May 27, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–99–02), including Amendment No. 1, relating to the listing eligibility criteria for closed-end management investment companies registered under the Investment Company Act of 1940, is approved.

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[6] *See* Amendment No. 1, *supra* note 4.

[7] The ICI is a national investment company industry association. Its membership includes 7,408 open-end investment companies (''mutual fund''), 499 closed-end investment companies and eight sponsors of unit investment trusts. The ICI notes that mutual fund members have assets of about $5.468 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders.

[8] *See* letter from Ari Burstein, Assistant Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, March 1, 1999.

[9] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 16, 1999.

[10] The NYSE noted that the proposal omitted a projected earnings requirement that the Exchange determined provided minimal incremental value.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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

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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''),[1] and Rule 19B–4 thereunder,[2] 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.[3] 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.[4] The proposed amendment to Exchange Rule 347 would clarify that the Exchange's Rule should not be interpreted to preclude employees from brining employment-related claims against members and member organizations before the EEOC, NLRB, or state or local antidiscrimination agencies.[5]

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 pursing 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,[6] and in particular, with the requirements of Section 6(b)(5).[7] 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 employment discrimination from arbitration unless the parties have agreed to arbitrate the claim after it has arisen.[8]

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,[9] 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.[10] These standards include Section 6(b)(5) of the Act,[11] 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,[12] that the proposed rule change (SR–NYSE–99–04) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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

BILLING CODE 8010–01–M

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.

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[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41151 (March 10, 1999) 64 FR 13460.

[4] *See* Exchange Rules 347 and 600. Under the Exchange's Rules, discrimination claims are eligible for Exchange arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

[5] 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.

[6] 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).

[7] 15 U.S.C. 78F(b)(5).

[8] *See* Securities Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999).

[9] 15 U.S.C. 78s(b)(2).

[10] 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.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).